Public Utilities

FORTNIGHTLY

December 23, 1937

PUBLIC UTILITIES REPORTS, INC.
PUBLISHERS

PLUS KWH PLUS KWH PLUS KWH

Have you include

Genuine SILEX

GLASS COFFEE MAKER

in your 1938 program

Many utilities have recognized in the Silex glass coffee maker the leader for building domestic load. For 1938 they have planned extensive campaigns to take advantage of this nationally advertised—nationally accepted appliance . . . the world's finest glass coffee maker.

If you have not included glass coffee makers in your plans, write for campaigns sure to reach the greatest number of your customers . . . sure to produce the largest increase in your domestic consumption.

No other small appliance has the potential market . . . the load building possibilities of Silex glass coffee makers. Backed by the tremendous advertising campaign selling the new Anyheet Control . . . that keeps coffee at any heat . . . and uses more KWH . . . you can make Silex glass coffee makers YOUR loading building leader. Write for plans today.

All Silex glass coffee makers have a number of exclusive features . . . Pyrex brand glass, guaranteed against heat breakage . . . quick cooling stove . . . and many others.
Models from $4.95 to $10.95.

The Silex Company, Dept P, Hartford, Connecticut

Genuine SILEX GLASS COFFEE MAKER

TRADE MARK REGISTERED U.S. PAT. OFF.

BREWING COMPLETED WITHOUT REMOVING GLASSWARE FROM STOVE

PLUS KWH PLUS KWH PLUS KWH

H

le

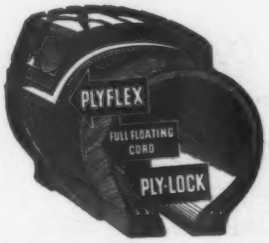
m

STOLEN

Many Valuable Hours and Hundreds of Dollars from Utility Operators

Just as though a gang of thieves entered your garage—or stopped your trucks on the road—and stole your tires—sidewall breaks in truck tires take a terrific toll of time and money.

The sidewalls represent the "Failure Zone." It is here, engineers discovered, that eight out of ten premature failures occur. Often tires must be taken out of service thousands of miles before their time because they fail in the sidewall long before the tread is worn.



Triple Protection Brings Big Savings

Sidewall failures seldom occur in Goodrich Silvertowns because these tires are *triple protected*. Statistics show that *Triple Protection* checks 80% of all premature failures. It not only gives your tires this extra protection but it prevents a big cause of blow-outs and at the same time cuts down road delays.

How Triple Protection Works

1. PLYFLEX — distributes stresses throughout the tire —prevents ply separation —checks local weakness.
2. PLY-LOCK—protects the tire from breaks caused by short plies tearing loose above the bead.
3. 100% FULL-FLOATING CORD—eliminates cross cords from *all* plies—reduces heat in the tire 12%.

Costs No More

Here's the amazing part about this amazing tire. Although it costs us more to make it costs you not one cent more than other quality tires.

Why not get acquainted with these new Goodrich Tires now? There are over a hundred types and sizes. But there's one type—one size—that will help stop waste in your fleet.

The local Goodrich dealer can find that particular tire with "The Truck Tire Calculator," a scientific device which selects the proper tire combinations, gives actual costs for the life of the tire and shows you how much you can save.

Call the Goodrich dealer for further details or write direct to The B. F. Goodrich Company, Akron, Ohio.

Goodrich *Triple Protected* **Silvertowns**

SPECIFY THESE NEW SILVERTOWN TIRES FOR TRUCKS AND BUSES

Editor—HENRY C. SPURR
Associate Editors—ELLSWORTH NICHOLS, FRANCIS X. WELCH
Contributing Editor—OWEN ELY

Public Utilities Fortnightly

VOLUME XX *December 23, 1937* NUMBER 13

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

PUBLIC UTILITIES REPORTS, INC., PUBLISHERS

Publication Office ..... CANDLER BUILDING, BALTIMORE, MD.
Executive, Editorial, and Advertising Offices ..... MUNSEY BUILDING, WASHINGTON, D. C.

PUBLIC UTILITIES FORTNIGHTLY, a magazine dealing with the problems of utility regulation and allied topics, including also decisions of the regulatory commissions and courts, preprinted from *Public Utilities Reports, New Series,* such Reports being supported in part by those conducting public utility service, manufacturers, bankers, accountants, and other users. Entered as second-class matter April 29, 1915, under the Act of March 3, 1879. Entered at the Post Office at Baltimore, Md., Dec. 31, 1936; copyrighted, 1937, by Public Utilities Reports, Inc. Printed in U.S.A.

PRICE, 75 CENTS A COPY ANNUAL SUBSCRIPTION, $15.00

Pages with the Editors

THIS is the season of the year when eager little folks all over the land are writing anxious notes to Santa Claus. We were somewhat surprised, however, to receive a few days ago a letter from one of our subscribers addressed to Santa Claus in our care. We are glad to publish this, on the chance that good St. Nicholas occasionally reads the FORTNIGHTLY, for such action as the jolly saint sees fit to take.

Dear Santa Claus:

After all the wicked things you have been hearing about me for the last few years, it may surprise you to be getting a letter from me because I am a business man. To be specific, I am in the utility business. How long I will be in the utility business is something I often wonder about and that is one of the reasons why I am writing this letter to you.

Believe it or not, S. C., I have tried to be a good citizen, to serve the public, to keep out of debt, and jail, and to pay all the taxes I am supposed to pay. Yes, I know you have heard reports to the contrary, and from all the birch rods and yardsticks I have been receiving in my stockings for the last five years you must have been convinced. But how about giving me a break, S. C., just this once? I only want two things, really.

First, I want a New Deal in taxes, especially on the undistributed-profits tax. I won't go into this in detail because surely you must be getting a lot of letters from other business men asking for the same thing and for the same reasons.

Second, I want a nice new unbreakable moratorium on Federal power projects. I promise not to break or cripple the ones already built or on the way, but, please, please, S. C., put a damper on Uncle Sam who is as much your competitor as he is mine. Otherwise, some day he will run us both out of business.

If you are in a really good mood, you might look into the Holding Company Act and the "death sentence," but just the two things I have mentioned will make a wonderful Christmas for me, S. C. If I can get them I promise to get busy overhauling my business construction and to look into this prudent investment theory. I'll even try to grow to love the New Deal, and Representative John E. Rankin, and all the Federal commissions forever and evermore.

Yours in Hopes,

(Signed) Utility Executive

P. S. And even if you can't help me, S. C., at least for Christmas' sake don't go helping the PWA!

HERBERT COREY

He gives fourteen reasons why corporations cannot prosper without surplus.

(SEE PAGE 811)

IF Santa Claus needs any specific reasons why the undistributed-profits tax should be repealed, he might read with interest the leading article in this issue by our frequent contributor, HERBERT COREY, Washington magazine writer, whose work is too well known to our readers to warrant further explanation here.

AMONG other important issues in the recent mayoralty campaign in New York city was the issue of transit unification in our great metropolis. All sides (there were four sides to this question when we last counted them) seem to agree that there should be some sort of transit unification, but unanimity in unification appears to stop definitely at that point. The New York transit commissioners are working on one plan, the Seabury-Berle school of thought, endorsed by the reëlected Mayor LaGuardia, already has a plan. The transit companies involved have some ideas on the subject, and so have the labor unions, communists, taxpayer leagues, and others which might be grouped, somewhat incongruously, under the heading of Miscellaneous.

IN this issue (page 831) we have an article on New York city transit unification which is a joint product of three experts who have actually worked on the subject: WILLIAM G. MULLIGAN JR. (LL. B., Harvard), assistant corporation counsel in charge of franchise division,

formerly assistant to Honorable Samuel Seabury, special counsel to the city in rapid transit matters; JAMES T. ELLIS, expert accountant retained by the corporation counsel for rapid transit work, formerly on the New York city transit unification staff, and JEANNE DE LUCA, assistant to WILLIAM G. MULLIGAN JR., in rapid transit matters, formerly on New York city transit unification staff.

Now that Charley Michelson has predicted that the Republicans will nominate ex-President Hoover to duplicate Grover Cleveland's skip-a-term feat in 1940, and John Hamilton is on record to the effect that the Democrats will try to make it three straight with Roosevelt, the task of the two major parties should be greatly simplified but it probably won't be. Still, this thoroughly up-to-date practice of political leaders picking their own opposition does have interesting possibilities. Now how about this idea for a short, efficient, restful campaign virtually devoid of ballyhoo:

FIRST of all, let us change the rules so that the candidate who gets the *least* number of electoral votes gets the White House job. This would have the automatic effect of throwing the full support of the Democrats behind the Republican standard bearer and vice versa. Neither side would waste much time plugging its own candidate. It is even doubtful whether the candidates would speak in their own behalf although they might throw a few bouquets at the opposition (which would be *different* you've got to admit). More likely both sides would concentrate on the practical task of getting out the vote for the other side and may the best man lose! (It's all yours, Jim Farley, take it away!)

JOHN BAUER

Utility regulation, after all, is primarily a matter of municipal concern.

(SEE PAGE 819)

ALTHOUGH it was written prior to the recent argument in the U. S. Supreme Court in the Pacific Gas & Electric Company Case, the much awaited opinion of the high court in that case may lend a new timeliness and sparkle to the article on the general subject of utility regulation (starting page 819) by our good friend, DR. JOHN BAUER. He seems to think that whatever comes of the rate base controversy, a little more home rule by municipalities might be the best solution to the whole controversy of utility regulation. DR. BAUER (A. B., Doane College and Ph.D., Yale) is an old hand at regulation if there ever was one. Soon after completing his education he broke into professional regulation via a staff job with the New York Public Service Commission and has since practiced, studied, and written about the subject as much as any other expert in the field. He is at present director of the American Public Utilities Bureau —a consulting group with headquarters in New York city.

As the year 1937 and the special session of the 76th Congress draw to a close, we hear sharp reminders from the administration to the lawmakers that they have only a few days left to get out of the trenches by Christmas, and to the business interests (including the utilities, of course) that they have only a brief time before Christmas to finish all their shopping for new plants, dynamos, and other things with which to make more jobs for a happier New Year in 1938.

ALL hope is lost that the Congress will complete even one of its major chores before the Holiday recess and the business men (still including the utilities) seem to be undecided about just what sort of a gift to get for Uncle Sam. And so it may be that even during the season of peace on earth to men of good will we may still be hearing the overtones of Patrick Henry's plea: "Gentlemen cry peace, peace; but there is no peace."

BE that as it may, we the editors of PUBLIC UTILITIES FORTNIGHTLY can still take this occasion to wish to all of our readers and friends, a merry, merry Christmas. We would even add the usual New Year greeting were it not for the fact that our fast-fading calendar for 1937 tells us that we will have another opportunity to do that when the next issue of PUBLIC UTILITIES FORTNIGHTLY is out on January 6th.

The Editors

In This Issue

In Feature Articles

In Financial News

In What Others Think

In The March of Events

In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 441-504, from 20 P.U.R. (N.S.)

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

JOHN C. PAGE
U. S. Commissioner of Reclamation.

"At this time we are engaged in construction of 12 projects which upon their completion ultimately will bring 2,105,040 acres of new, desert lands into production."

THOMAS N. McCARTER
President, Public Service Corporation of New Jersey.

"My ideas have changed a lot in thirty-five years. I'm a lot more tolerant than I used to be. My viewpoint is different. I guess we all get that way as years go on."

THOMAS W. PHELPS
Writing in Barron's.

"Things you've once been able to laugh at never seem quite so fearsome as before—and in politics things at which the voters laugh never are so dangerous again."

THOMAS C. BUCHANAN
Member, Pennsylvania Public Utility Commission.

"Today this fiction [of reproduction cost] has become a menace to sound investment and a dangerous threat to private utility operation as opposed to public ownership."

KEMPER SIMPSON
Former Economic Adviser to the Securities and Exchange Commission.

"One wag said that the commission [SEC] was so anxious for new registrations that it was rushing out on Pennsylvania avenue and nabbing all prospective registrants."

ALBERT STEELE
Writing in the Nebraska State Journal.

"Money madness is reactionary, but it is only one manifestation of reaction. Lust for power, the itch to run things, intolerance of differing views—these are its blood brothers."

ALFRED M. LANDON
Former Governor of Kansas.

"We have had a new deal. Now what we most need in America is a new yardstick—a yardstick to measure the ability and the accomplishments, as well as the good intentions, of public officials."

WILLIAM E. LEE
Member, Interstate Commerce Commission.

"It is my honest belief that, as a whole, the regulatory commissions, both state and national, have measured up to expectation. I believe that our batting average is about as good as that of the courts."

H. I. PHILLIPS
Newspaper columnist.

"Quite a few local folks who have been in the stock market lately are discovering that when you lose your shirt ethically under the SEC it hurts just as much as when you lose it unethically, as in the old days."

RAYMOND MOLEY
Editor, News-Week.

"Personal government is on the wane, and the rule of the people—and not just a faction of the people—is reëstablishing itself."

EDITORIAL STATEMENT
The Management Review.

"The dividing line in industry should run not between Capital and Labor, but between the kind of Labor that works and saves and the kind that doesn't. It is a line between the workers who have made America and 'Labor' which is helping to destroy it . . ."

FLOYD W. PARSONS
Editorial Director, Gas Age.

"In all of the depressions of the past, recovery came along naturally without interference on the part of government officials and Federal agencies. Today we have neither a natural recovery nor a regulated one. No one has any idea where we are headed or what the outcome will be."

ROY E. WRIGHT
Cambridge Gas Light Co.

"For some reason the gas industry is always on the defensive. They never make a move until they are forced and by then a good part of the potential has been lost to competitive fuels or they are not in a position financially to take proper action to gain the advantage that was once theirs."

HENRY EARLE RIGGS
President, American Society of Civil Engineers.

"Passamaquoddy certainly cannot qualify as an economic project. There is no demand for power at that location. If there were such a demand the economic thing to do would be to build a steam plant for six or seven million dollars instead of the proposed tidal plant for ten times as much."

JOHN BAUER
Director, American Public Utilities Bureau.

"The only way by which utility rate regulation can be made effective under private ownership and operation of utilities is through assumption of outright responsibility by the municipalities for proper utility rates and service, and through establishment of clear and definite standards of administration."

N. C. MCGOWEN
President, United Gas Public Service Company.
(Also President-elect of the A. G. A.)

"Everything coming out of a well, both oil and gas, must be utilized to obtain the most profit from the investment and to prevent waste . . . This can be accomplished only if the oil and gas industries work together in solving these common problems, and then working together, coöperate helpfully with state regulatory bodies."

FRANKLIN D. ROOSEVELT
President of the United States

"As I look upon Bonneville dam today, I cannot help the thought that instead of spending, as some nations do, half their national income in piling up armaments and more armaments for purposes of war, we in America are wiser in using our wealth on projects like this which will give us more wealth, better living, and greater happiness for our children."

Unloads a Car of Coal in 1½ Minutes

The Link-Belt rotary railroad car dumper has brought the economies of the vertical lifting type of dumper within the reach of those whose unloading requirements are comparatively low. It handles with ease, cars 26 ft. to 60 ft. long, 7 ft. to 12½ ft. high; 8½ ft. to 11 ft. wide, and with capacities up to 120 tons.

Operation is so simple, automatic and fool-proof, that unskilled labor can perform it readily; it is completely under control at all times, and can be stopped instantly at any point of cycle.

The standard 50 ft. dumper is a paying investment where the unloading requirements do not exceed 15 to 20 cars a day, and of course the savings are greater where more cars are handled. It is readily adaptable to existing or new plants.

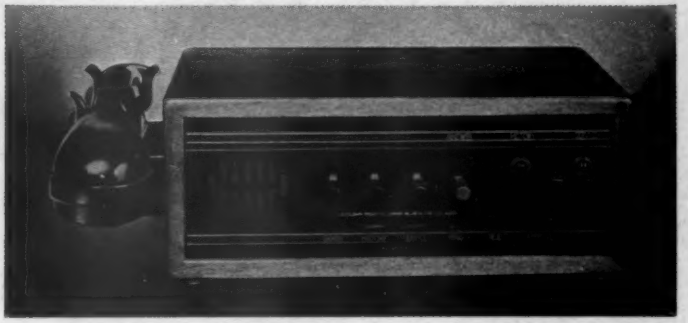
Send for folder No. 1004. Address Link-Belt Company, Chicago, Indianapolis, Philadelphia, Atlanta, San Francisco, Toronto. Offices in principal cities.

7081

LINK-BELT

ROTARY RAILROAD CAR DUMPER

KEYS...



. . . to improved public relations.

KEYS that centralize all information needed in dealing with customers on the desk of a Customer Contact Clerk. Keys that permit instantaneous voice communication with History Clerks, Service Clerks, Bookkeepers and other reference departments. Keys that ease congestion, that save time, that reduce losses, that increase efficiency . . . keys that speed transactions and give your customers a new conception of the word SERVICE.

●

These are the keys of the Dictograph System of Interior Communication and Control—designed especially for public utility companies. With the aid of this system a Customer Contact Clerk takes care of *all* personal contacts with customers—performs at top efficiency. He never stirs from his desk to waste time in obtaining reports and information. The flip of a key on the simple instrument before him puts him in immediate contact with any wanted reference source. Without the customer being aware of it, History and Service departments "listen in" on the interview. In a moment's time they are ready to signal by means of red or green lights their approval or rejection of a service application—or to report by means of the hand-set phone their findings on bill questions, complaints, credit ratings, etc. Everything is smooth, everything is under control. There are no tiresome waits, no annoying "asides" among clerks, no discourtesies—the customer goes away with a favorable impression of his public utility company.

● Dictograph also draws to your attention its widely used general executive system — for internal communication between administrative and executive departments. These systems feature many exclusive advantages we will be glad to describe.

In brief this is what the Dictograph System of Interior Communication can do for you. But you will want all the facts. You will want to know, for instance, how Dictograph can be operated for still greater efficiency in conjunction with a nationally-known Filing System. Dictograph has been successful over and over again in solving intercommunicating problems such as yours. Write today. Learn in detail why Dictograph is the *key to improved public relations.*

DICTOGRAPH PRODUCTS CO., INC.

580 FIFTH AVENUE **NEW YORK, N. Y.**

Offices in All Principal Cities Throughout the World

MANUFACTURERS OF PRECISION EQUIPMENT SINCE 1902

A new International Cab-Over-Engine Truck working for the Associated Telephone Co., Ltd., Long Beach, Calif., a subsidiary of the General Telephone Corporation. This unit is used as a dispatch truck for carrying mail, instructions to divisions, and emergency repair parts between several division points. It travels more than 200 miles a day, six days a week.

THE *New* INTERNATIONALS

INTERNATIONAL HARVESTER engineers worked for months to develop these new trucks—a quality line of Internationals completely new in engineering and exterior design. The men who design and build and test them took all the time that this kind of job requires and put into it all the experience that Harvester has gathered in more than thirty years of truck manufacture. And now months of actual service in every kind of job testifies to a new high accomplishment in truck construction and a new low cost in truck operation.

Every one of these new Internationals, from the modern light-delivery truck to the powerful heavy-duty six-wheel units, is ALL-TRUCK throughout as all Internationals have always been.

See these new trucks now at the nearby International branch or dealer showroom. The right chassis and right body for every hauling problem. Ask for catalogs of the sizes in which you are interested.

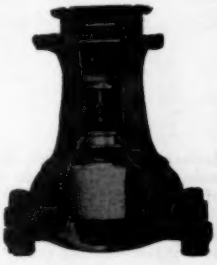
INTERNATIONAL HARVESTER COMPANY
(*Incorporated*)
180 North Michigan Avenue Chicago, Illinois

INTERNATIONAL HARVESTER

Just plain horse sense

WHEN you consider that today—or years from today — you can readily get new interchangeable parts that will perfectly fit into old veteran Trident and Lambert Water Meters . . .

Certainly it's just plain horse sense to invest in these water meters with interchangeable parts that insure no depreciation—no obsolescence—capital value unimpaired. A type for every service.



SHOWING MODERN PARTS IN OLD TRIDENT METER

NEPTUNE METER CO.—THOMSON METER CORP.
50 WEST 50th STREET (Rockefeller Center) NEW YORK
NEPTUNE METERS, LTD.
345 SORAUREN AVENUE, TORONTO, ONTARIO, CANADA

NOTHING need be set aside for DEPRECIATION or LOSS OF PROPERTY VALUE when you use

TRIDENT and LAMBERT WATER METERS

REFERENCES: THE MORE THAN 6 MILLION SOLD THE WORLD OVER

Dependable AS THE SERVICE THEY HELP TO MAINTAIN

The Baker Steel equipment includes—

Line Construction and Maintenance Bodies; Light, Medium and Heavy Duty • Telephone Installation and Service Bodies • Cable Splicer Trailers • Pole and Material Trailers • Aerial Ladder Units • Winches and Power Take Offs • Pole Derricks • Reels

PUBLIC UTILITY **Baker** BODIES & EQUIPMENT

Embracing several wholly new developments, Baker Steel Line Body No. 1480, shown above, marks a far step ahead in line body design. Its exclusive features, never before available, afford substantially greater efficiency, higher safety and improved appearance.

You will find these new features highly important in considering your line body requirements for 1938. Write for catalog and complete information.

THE BAKER-RAULANG COMPANY,
Body Division, W. 80th St., Cleveland, O.

BODIES AND EQUIPMENT FOR EVERY UTILITY PURPOS

TITAN

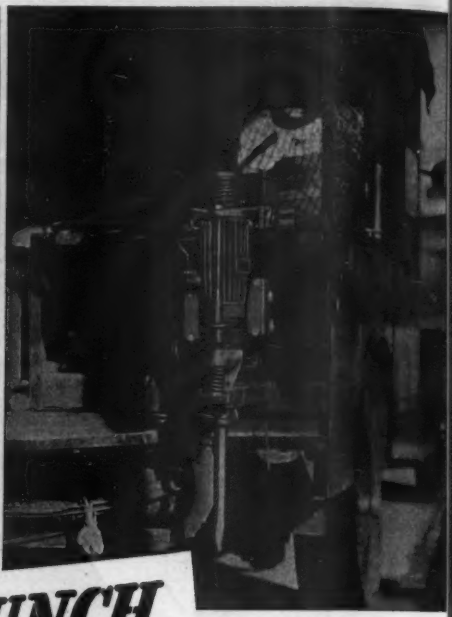
SNAP ACTION THERMOSTATS

To specify a Titan Snap Action Thermostat is to specify a device tested by wide field experience . . . proven by years of use under the most severe conditions with all types of gas from Canada to the Canal Zone . . . extraordinarily sensitive yet rugged, unfailing in operation, practically fool-proof and trouble-proof, virtually free from the necessity of servicing. Titans are already standard equipment on the majority of storage heaters approved by the American Gas Association. They are available for any size from the smallest to the largest. Write for details.

THE TITAN VALVE & MANUFACTURING COMPANY

Thermostats :: Safety Pilots :: Relief Valves

9913 ELK AVENUE, CLEVELAND, OHIO



PLENTY OF PUNCH ...REAL PORTABILITY

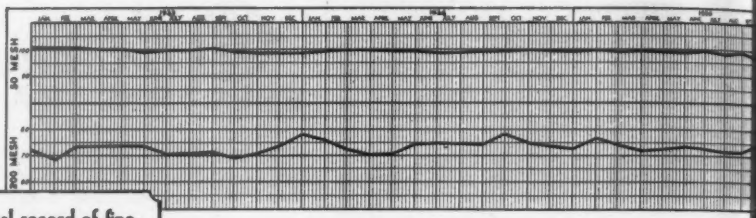
Whether the job is tearing up pavements, driving test rods, back-fill tamping, sheeting driving, drilling or cutting . . . a self-contained and self-powered Barco offers important time and money-saving advantages.

No demolition job is too tough—winter or summer. No costly cumbersome auxiliary equipment to block traffic or boost transportation costs. A Barco is easily packed in the back of a car or the corner of a truck. Low in first cost, a Barco Portable Gasoline Hammer offers savings in operation and maintenance that will startle you. Ask for complete details and performance records on all types of public utility hammer work.

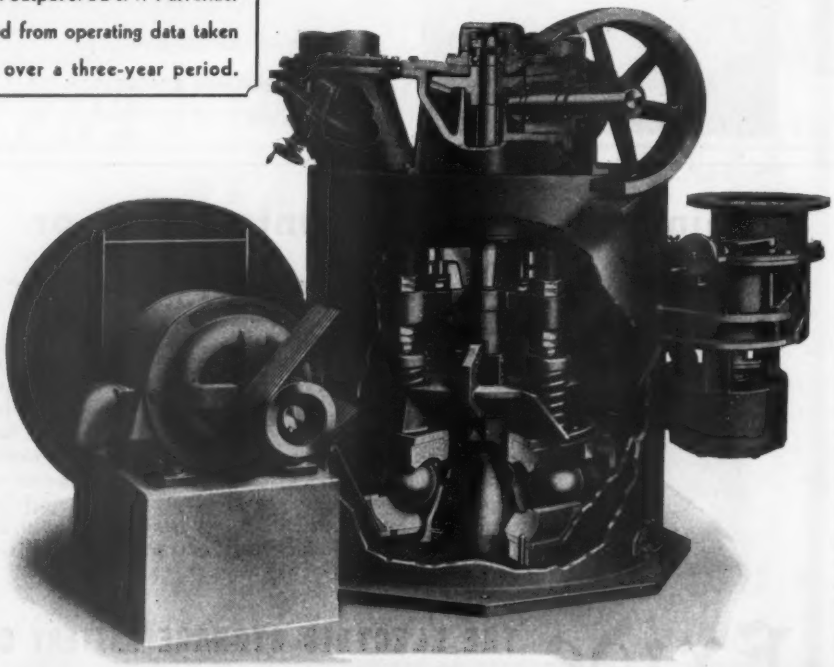
BARCO MANUFACTURING CO.

1803 W. Winnemac Ave., Chicago, Ill.

The Ball-Bearing Grinding Element of



Above is a typical record of fineness of output of a B & W Pulverizer plotted from operating data taken daily over a three-year period.



THE BABCOCK &

the B & W Pulverizer -

Sustains Fineness . . .

normally the balls remain spherical and continue to roll smoothly in the grinding rings

Reduces Outages . . .

grinding elements are of high-grade wear-resisting materials

Maintains Efficiency . . .

wear of grinding parts does not reduce fineness or increase unburned-carbon loss

Cuts Upkeep Costs . . .

through long life of the grinding elements

The dollar and cents value of these savings will, of course, vary over rather wide limits. In a typical case it amounted to almost ten per cent of the cost of the pulverizer during the life of the grinding elements. These and other money-saving advantages of the B&W Pulverizer and the B&W Direct-Firing System are outlined in Bulletin G-19...copies on request.

THE BABCOCK & WILCOX COMPANY
85 LIBERTY STREET NEW YORK, N. Y.

WILCOX COMPANY

Good Will Remains Behind Hoosier Crews

HOOSIER ENGINEERING CO.

46 So. 5th St., Columbus, Ohio

Chicago — Canadian Hoosier Engineering Co., Ltd. — New York

Montreal

ERECTORS OF TRANSMISSION LINES

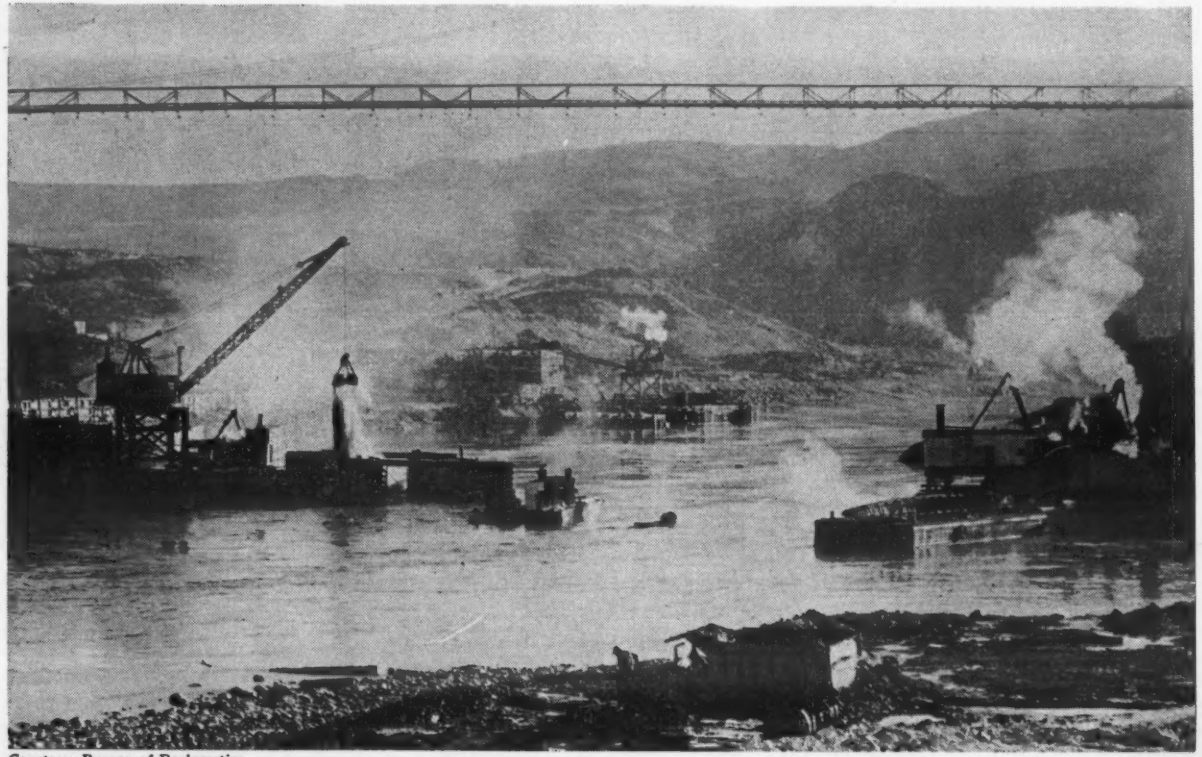
Utilities Almanack

DECEMBER

23	T^{h}	¶ *American Engineering Council will hold annual convention, Washington, D. C., January 13-15, 1938.*
24	F	¶ *American Society of Civil Engineers will convene for annual meeting, New York, N. Y., January 19-21, 1938.*
25	S^{a}	¶ *Merry Christmas, 1937!*
26	S	¶ *New York and New Jersey Sections, American Water Works Association, open joint meeting, New York, N. Y., 1937.*
27	M	¶ *American Statistical Association convenes, Atlantic City, N. J., 1937.*
28	T^{u}	¶ *Tax Policy League starts annual meeting, Atlantic City, N. J., 1937.*
29	W	¶ *American Institute of Electrical Engineers will convene for winter meeting, New York, N. Y., January 24-28, 1938.*
30	T^{h}	¶ *Minnesota Telephone Association will hold meeting, Minneapolis, Minn., January 25-27, 1938.*
31	F	¶ *Canadian Electrical Association will hold annual winter conference, Montreal, Can., January 31, February 1, 1938.*

JANUARY

1	S^{a}	¶ *Southern Gas Association will hold annual meeting, Dallas, Texas, February, 1938.*
2	S	¶ *National Electrical Manufacturers Association will hold meeting, New York, N. Y., February 7-12, 1938.*
3	M	¶ *New England Gas Association will hold annual business conference, Boston, Mass., February 24, 25, 1938.*
4	T^{u}	¶ *American Railway Engineering Association will hold meeting, Chicago, Ill., March 15-17, 1938.*
5	W	¶ *Oklahoma Utilities Association will hold convention, Oklahoma City, Okla., March 21, 22, 1938.*



Courtesy, Bureau of Reclamation

Cofferdam Construction across the Columbia River

Public Utilities
FORTNIGHTLY

VOL. XX; NO. 13 DECEMBER 23, 1937

Fourteen Fatal Flaws

Provisions in the Federal Tax Law of 1936 which shackle business and prevent recovery

By HERBERT COREY

ONE of these days the story of the tax disease in the United States during the years 1936 and 1937 will be in the case books. Here was a large country, filled with man power, banks full of money, apparently on the road to high-powered prosperity, and all of a sudden it got sick. The political doctors of tomorrow may recall the anecdote of pioneer days. A city doctor had been called to the country in consultation. The country doctor said:

"This man has got a mighty bad case of milk fever."

"There is no such a malady as milk fever," snapped the city man.

"I know there's no such a thing," said the country doctor, "but he's darned near dying of it."

The one statement that can be made with certainty at the time of writing is that both houses of Congress, the New Deal administration, the business men, and the economists are all certain that something is wrong with the tax laws. They looked all right when Congress adjourned in a hurry to go to the conventions in 1936 but they have not worked all right. Fourteen flaws have been found in them by the examiners, they say there may be more, and if they are not corrected at least in part, tomorrow's business troubles will be worse than today's. But they also say the American business man is the most resilient creature on the footstool and that if he is given a fair chance he will bounce back into prosperity. For the moment let's look at the genesis of the trouble.

We had pulled, paid, and ballyhooed ourselves out of the hole into which we fell in 1929. The falling into that hole had not been altogether our fault. We were full of sin and black with shame, but then the whole world had gone wrong. International credits were more of a gamble than roulette, bankers had gone Yogi and were staring at their navels, and all over Europe neighbors were taking the old rifle down from the mantel and going out to kill themselves a mess of neighbors. The marvel was not that we had a smash, but that we had not had it sooner. Every one knows how we got out of it. Perhaps we did foolish things and unnecessarily extravagant things. But we got out.

THOSE were the days of the Dance of the Alphabets at Washington. Traffic policemen had to rope reformers in squads of ten to get them safely across the streets. Every other man had a new political nostrum bottled and ready to serve. No doubt much of what went on at Washington was nonsense, but it was beautiful nonsense. The people had taken heart. They knew from experience that they could live through almost any legislative fumbling until another Congress could be elected to unfumble it. They began to buy and sell; the corporations began to pay dividends again; and there was every reason to believe that prosperity was on the road.

Then the tax law of 1936 killed that prospect of happiness as surely as any kitten was ever drowned in a bucket.

No one intended to do any such thing, of course. Lord, no. Every man concerned wanted to see more business done in the United States, more men employed, more profits made, more factories built. All these things seemed certain. Other peoples say we are the most extravagant nation in the world. We think we are merely comfort lovers. For four or five years our 130,000,000 people had not been able to buy all the trick things Americans enjoy. The appetite for radios, glassed-in shower baths, new cars, slate roofs, automatic dish washers, hand-set telephones, pedigreed dogs, male stars with plucked eyebrows, push-button furnaces, had become almost uncontrollable. We knew we would have to pay high taxes, for we had been spending at a rate we all knew we could not keep up.

BUT we were not frightened in the homes. Here and there an economist warned and a banker waved a red lantern and a manufacturer shortened his inventories. But the little breezes that disturb Congress have their origin in the homes and not in the marble halls, and the little breezes were not blowing. Look back over the printed record of the past four years and it will be seen that the protests against overspending and undersaving, with their attendant warnings of higher taxes to come, all had their beginnings in the cities and none of them—or practically none—in the county seats. As a people we had concluded that we could pay our way out of debt with the big business to come.

Enter the fourteen fatal reasons. They fixed things so that our tax bills choked us. They shut off the mounting prosperity right at the source. If the fourteen reasons had been deliberately planned they would have been the fourteen most insane things that well-

meaning politicians ever did. But they were not planned to do anything like that. No fair-minded man can say that the fourteen reasons were designed to stop our growing business. They were written into the tax bill of 1936 by men who honestly believed that Americans can pay any kind of a tax that can be invented without suffering any injury during the paying process. They were sincere enough. They meant well. They merely did not understand the difference between taxes and taxes. One tax is merely a levy on the income of a citizen to pay the costs of government. The next tax may spoil his chance of making that income. The same difference may be seen between building and blundering. The fourteen fatal reasons are:

1. PLENTY of corporations kept their men at work during the worst of the depression, even if the corporation lost money on every day and item. If their managers were economic royalists then what this country needs is a lot more like them. No need to get sentimental about them. There have always been American business men just like that. When business began to turn up they found they had impaired the capital of their corporations, but they did not worry about it. A few years of good business would plug that hole again. In order to take care of the new business they were obliged to borrow money. Then they found the "Undistributed Profits Tax" did not exempt from its operations the corporations which had gamely and patriotically kept on operating at a capital loss through the hard times. They were forced to pay tax and surtax on their newly earned profits and stand their own losses.

Net result: the financial position of such corporations had been weakened. They could not take the money they earned to pay off the debts they had contracted, but were compelled to give it to the government.

That isn't all of it. In most states corporations with impaired capital are forbidden to declare dividends. If, therefore, such a corporation complies with the laws of its state—which it must do—it piles up a so-called surplus which the Federal government seizes at least in part. If it tries to give a little money back to its starved stockholders it is in trouble with the state.

2. A "GREAT majority of corporations" according to reports made to the Chamber of Commerce of the United States, "have outstanding indebtedness." But in only two or three cases do the contracts for indebtedness qualify for tax relief under the somewhat tricky provisions of the 1936 law. In a sample case a company has recently been making profits. Therefore the Federal government has taken its

¶ "PLENTY *of corporations kept their men at work during the worst of the depression, even if the corporation lost money on every day and item. If their managers were economic royalists then what this country needs is a lot more like them. No need to get sentimental about them. There have always been American business men just like that.*"

large share of those profits. Meanwhile the company's capital has been impaired and it is heavily in debt. Every dollar exacted by the Federal government is one dollar that cannot be used in paying off its debts.

Net result: The company had planned to buy new equipment and expand its business, but that idea has been given up. The bloodletting by the tax-makers prevents it getting the capital it needed. Anyhow, "We are afraid."

3. If earnings are retained to take care of the larger inventories which a growing prosperity would demand, the Federal tax gatherer may demand 45 per cent or more of the earnings retained. The more business is done, the greater is the need for adequate working capital. If the Federal government scoops in the capital then the corporation must go to the banks. It is in effect compelled by the government to borrow its own money.

Net result: If a corporation making $100,000 of net taxable income were compelled to retain all that it could of its earnings, it could only hold on to $68,500. The $31,500 remaining would go to the government. The stockholders would get nothing.

4. Reports indicate that the typical and healthy method of developing the small business concern is by plowing whatever money is made back into the business. Usually this is the only way a small business can expand. During the period of test—while the "bugs" are being worked out—it has practically no access to the capital market. But the undistributed profits tax makes expansion by this means practically impossible. The government gets the gravy. The stockholder licks the spoon.

Net result: A company employing 5,800 persons used its earned profit for the purchase of new machinery and the erection of new buildings. But the tax penalty was so heavy that this expenditure was much less than would have been made under other conditions. Therefore employment in other lines was cut down.

5. The financially weak company is placed at a disadvantage compared to its strong rivals. The law provides that promotional and general operating expenditures are deductible from the returns made for taxing purposes. Therefore the big company can go into a selling campaign because it can afford to take from its earned profits. If the weaker company tries to take from its net the funds needed for expansion it must pay a high tax rate. It is handicapped because the costs of growth must be met by borrowed money.

Net result: Assume two corporations, one strong, one weak, each making an annual profit of $100,000. The strong company, being able to distribute its income, pays a Federal income tax of $13,840. The weaker corporation, not being in a position to distribute its income, pays a tax of $31,500. "To him that hath shall be given. From him that hath not shall be taken away."

6. Often corporations which are making money are compelled to tie up their current earnings in inventories, equipment, accounts receivable, and the like. Such corporations sometimes borrow money for earned

Tax Bills That Choked

"THEY fixed things so that our tax bills choked us. They shut off the mounting prosperity right at the source . . . They were sincere enough. They meant well. They merely did not understand the difference between taxes and taxes. One tax is merely a levy on the income of a citizen to pay the costs of government. The next tax may spoil his chance of making that income."

dividend distributions in order to minimize the surtax. This adds to the cost of doing business, upsets the ratio of quick assets to quick liabilities, and compels them later to incur the surtax in order to discharge the debt.

Net result: During the depression a Connecticut company used over a million dollars of its reserve to continue in business. Because of the surtax it is now unable to rebuild its depleted reserves.

7. ECONOMISTS are generally of the opinion—no contrary opinion is now recalled—that the corporate surpluses set aside during good times prevented the complete collapse of the American business structure during the depression. Dividends were paid and the stockholders spent the money and materials were bought and men kept at work when the state of business would have justified a shutdown. The Federal attack on these surpluses will weaken that protection for the future.

Net result: A foundation is thus laid for a bigger future boom, because money will be paid out in dividends when it should be held for protection, and a deeper depression, because the protection will have been lessened.

8. CURRENT employment is being lessened because of the cumulative effect of the surtax. Expansion being made more difficult, less materials are being purchased and fewer men employed for what would be the normal process of increase and replacement.

Net result: One Oklahoma gasoline company—one out of many companies reporting — decided against building two tanks at a cost of more than $1,000,000, because of the penalty imposed by the surtax. About 700 men would have been employed in construction and 100 in permanent operation.

9. SOME corporations have paid dividends in excess of the amount which seemed prudent, in order to avoid the punitive surtax. Stockholders not unnaturally think they should get the profits rather than the government.

Net result: The financial structure of such companies has been weakened. Coincidentally the dividends which should have been retained aided in the creation of a factitious appearance of general prosperity.

10. In order to receive a dividend-paid credit the law requires that the distribution must be made in a taxable form before the end of the tax year. It is obvious that company earnings cannot be determined in time to comply with this requirement. It is equally evident that the government would lose no money if the recipients of the dividends were permitted to follow the course set out in the income tax law, which permits credit for dividends distributed between the close of the taxable year and March 15th, which is the usual date for filing income tax returns.

Net result: A farm equipment company extends long credits and finds it impossible to determine its earnings definitely until some time in March. It is harassed by the necessity of reporting on earnings until it knows what they will be.

11. The complexity of the tax law is so great that the average business man simply cannot understand it all. He labors with it for a time, calls in his lawyer, and finally gets in a tax expert. The universal report is that this is tragically absurd. Corporation officials almost without exception are asking for a tax law a business man can understand.

Net result: Individuals and corporations alike report that the cost is staggering. Even when the returns have been filled out to the best ability of everyone concerned, they may not be acceptable to the government.

12. The requirement to base the normal tax return on the income during an arbitrarily fixed term of twelve months makes more trouble. Income varies from year to year with the most stable companies. In others the income habitually runs high for a time and is followed by a period of low returns. Over a given period a company might make only a small amount —might even lose money—and yet during that period it might have paid extremely heavy taxes. Furthermore the undistributed profits tax is not imposed on undistributed profits, as determined by business practices, but on a fictitious tax base designated in the statute as "undistributed net income." The application of the surtax to this inflated base in fact taxes an income which does not exist.

Net result: A public utility company on the West Coast has assets of approximately $265,000,000. It has earmarked funds required for insurance reserves, obligations contracted for, and other matters requiring future payment. These funds cannot be distributed or plowed back, but under the law are included in the tax base because of arbitrary and technical definitions. The language of the law in many cases creates a taxable income which does not in fact exist.

13. No relief from the surtax is granted in the event that the taxpayer's income as shown on the return is later increased by the commissioner or the courts. Such an unfortunate is liable for his failure to distribute the increased income in the year

in which it was earned, even though, as in No. 12, it was not earned at all.

Net result: An Indiana steel company shows a deficit in its earned surplus account of $1,900,000 and is in arrears $1,375,000 on its first mortgage sinking-fund obligations. Under the corporate charter and the bond sinking-fund contract the company is restrained from paying dividends from its current earnings. In 1936 it made approximately $600,000. The company's counsel held that it qualified under the relief provisions of the law and did not owe a tax on the surplus. The Bureau of Internal Revenue refused to accept this interpretation and the matter has been taken to court. Three stronger and better financed companies earned before taxes the sum of $11,100,000, on which they paid a total of $70,000 in surtax on undistributed profits. The weaker company, showing earnings before taxes of $892,804, must pay a surtax of $155,000 on undistributed profits.

14. COMPANIES needing additional capital are handicapped. "Of the 500,000 corporations filing income tax returns," according to the United States Chamber of Commerce, "only a small portion have ready access to the capital market. Less than one per cent of them have either stocks or bonds which are listed or have trading privileges on registered stock exchanges."

Net result: A company imports its raw materials. Quick delivery is impossible and prices are subject to wide fluctuations. In 1936 the company showed a profit for income tax purposes but had actually lost money because of the wide variance in prices of raw materials. It has no access to the established markets for capital and is therefore obliged to retain its earnings to build up working capital. For this it pays through the nose to the government.

THE fourteen flaws in the law are those generally set forth by business men and their technical advisers. The cases quoted in support have been taken almost at random from a selection made by the tax experts of the United States Chamber of Commerce from reports made by several thousand business men. The National Association of Manufacturers likewise secured reports from many business firms with approximately the same result. Not many business men have complained of the high totals of taxation. They have not resorted to inflammatory abuse or childish misrepresentation. They stand with the Prime Minister of Holland

¶ "ECONOMISTS *are generally of the opinion — no contrary opinion is now recalled—that the corporate surpluses set aside during good times prevented the complete collapse of the American business structure during the depression. Dividends were paid and the stockholders spent the money and materials were bought and men kept at work when the state of business would have justified a shutdown. The Federal attack on these surpluses will weaken that protection for the future.*"

when he told his country's parliament that:

"Ours is a self-respecting nation. We will pay our debts."

There has been no disposition on Capitol Hill to evade an acknowledgement of the facts as here set forth. No disposition, at least, so far as is reported by the Washington correspondents.

At the moment of writing they have indicated that without regard to partisan affiliation a majority of congressmen are anxious to do something which will lessen the load on business and permit the industrial machine to turn its wheels again. Likewise, at the moment of writing, encouraging symptoms have been noted in the Department of the Treasury.

Roswell Magill is the Permanent Under-Secretary of the Treasury and its expert on taxation. He is not a partisan of any one. He is an expert in finance by profession. Once before he was attached to the Treasury and resigned because he was interfered with and neglected. He went back to New York and his office. The 1936 tax bill was the product of Herman Oliphant, general counsel of the Treasury, and in 1936 the bright particular prodigy of that establishment. Secretary of the Treasury Morgenthau does not pretend to be a leader in tax matters. He then accepted Mr. Oliphant's counsels at par value. The report is that Mr. Oliphant is a member of that inner coterie of which Tommy Corcoran and Ben Cohen were the liveliest stars and with them had frequent access to the White House.

But when the 1936 tax bill began to turn to clabber on the Treasury's shelves, Roswell Magill was asked to come back. The report is that he came only on the condition that he be permitted to conduct a real inquiry into tax matters. He was interfered with once only, that being when President Roosevelt issued his message on the taxation of yachts and the like, which created a mild flurry at the time. Mr. Magill was then obliged to abandon his job to find facts with which to buttress the presidential statement. Since then he has been in correspondence with business men all over the country. He has a hard working corps of aides and at the moment of writing he had not been interfered with. The representatives of business men's organizations have found his attitude eminently satisfactory. His job is to write a bill that will work and will not hurt.

He is being aided by that little breeze reported by congressmen to be blowing in from the county seats. John Smith may be just an unregarded item among the eight millions in New York city. If he is laid off in Detroit, no one thinks of him as an individual. He is only one of the 12,000 or the 20,000 who have lost their jobs. But when he is back home on the steps of the courthouse he is listened to. If John Smith's father gets it into his head that Johnny lost his job because a bungling tax law was written at Washington, the congressman will hear about it.

As a matter of fact the congressman is hearing about it. That is why it is possible that something may be done.

State Regulation through Municipal Participation

Public rate control over private utility companies can, in the opinion of the author, be practically established under definite policy and regular administration and particularly under appropriate municipal action

By JOHN BAUER

IN two recent articles in PUBLIC UTILITIES FORTNIGHTLY,[1] I presented a survey and criticism of state public utility regulation with suggestions as to what might be done to make regulation a more satisfactory medium for protection and promotion of public interest.

Among the suggestions was the proposal for more positive assumption of responsibility by municipalities. The present article is devoted to more comprehensive development of the same idea; while it is concerned directly with electric rates, it applies also to other utilities. It will set out the municipal function with regard to electric power, the scope of reasonable responsibility, the correlation with state commissions, attainable local procedure, and the prospects of successful accomplishment.

A major difficulty with existing state commission regulation is that it takes in too much physical as well as functional territory, especially with the cumbersome system discussed in the earlier articles, the lack of adequate financial support, and the diffusion of responsibility throughout the state, without specific and separate focusing upon individual municipalities. While, of course, its jurisdiction extends to every community, yet its functions as provided by statutes are prescribed generally in statewide terms. While it is directed to fix reasonable rates wherever changes are needed, it is not specifically required to make local surveys of property valuations, operating costs, and other factors that enter into specific local rates.

Under the terms of statewide jurisdiction, the tendency of commissions

[1] Can Utility Rate Regulation Be Made Effective? June 24, 1937, issue; Relative Failure or Adequacy of Public Utility Regulation, August 19, 1937, issue.

has been to disregard individual municipal areas. This appears, first, in the accounting and annual reports required of companies which operate in two or more communities. The facts as to capital expenditures, operating expenses, taxes, revenues, service furnished, and other important information are recorded and reported by companies for their entire operations and service territories. If two or more municipalities are included, there is no separate showing of underlying facts which are essential for individual community determination of reasonable rates. While in general there is recognition that differences in community conditions must be taken into account in rate making, the records prepared and reported under commission orders merge and so obscure all the facts for the different communities served by a single company.

SEPARATION between municipalities of significant data requires special investigation and determination. Usually this can be attained only through allocations which involve opinion evidence, lead to more or less arbitrary methods, and invite manipulation and stand-off between communities. This is particularly true if rate inquiries are conducted at different times for jointly served localities. And where the local facts as to properties, operating expenses, and other circumstances are established through special investigation, the cost of inquiry and the technical phases of procedure almost inevitably preclude proper determination from the public standpoint, as recounted in the earlier articles.

Because of the merging of accounting and other records, because of the consequent difficulties of satisfactory separation, and because of general state jurisdiction, there is a strong tendency to ignore individual municipal conditions and to fix rates on a company-wide basis. In some instances, the statutes directly authorize statewide rate determination. In any such procedure, the individual community position is not specifically considered, and the rates imposed are likely to be inappropriate for the particular circumstances. There is, however, the much more serious danger that when specific municipal inquiry is avoided, company-wide investigation will go by default. Formal rate cases are undertaken mostly only upon occasions of public discontent and pressure. This is exerted principally through virtual community uprising. If this happens to include all or most municipalities served by the company, and if there is concerted action between them, more or less successful results may be attained. If, however, as is commonly the situation, discontent appears prominently only in one or few communities, and if the others are not particularly concerned or are willing to reap the expected benefits without joining in the efforts, then the public forces are enormously reduced; real inquiry may be sidestepped, or at best the results are stepped down through avoidance of specific local responsibility and action.

THE diffusion of jurisdiction and the company-wide accounting and reporting of facts, coupled with the extremely cumbersome system of control and inadequate financial support, inevitably produce extensive default in general commission responsibility for reasonable rates. What is essential,

apart from reconstitution of fundamental policies and methods of rate control, is to lodge responsibility definitely within each municipality, so far as this can be legally and practically attained. Provisions are necessary, first, for regular accounting and reporting of essential data for each municipality or distribution area; second, fixed periodical assembly and analysis of the facts; and, third, systematic revision of rates according to the facts established for each individual community.

Through such specific requirements, and through regular administrative provisions, rate control can be carried out much more satisfactorily than under prevailing conditions. There is also the further factor that a commission has largely *absentee* relation to individual localities. First, it is constituted of membership appointed or elected from only a few places. Second, it is usually located at the state capital, where it commonly holds hearings in all rate cases. The members are seldom acquainted with local conditions in any municipality for which rate adjustments are to be made. Nor do they personally make local visits, except under special circumstances. They merely receive testimony and exhibits, without the feel of personal knowledge of local conditions. The forces of local discontent and needs are diffused and do not reach the inner consciousness of the commissioners. Clear realization of community conditions and feeling of specific responsibility are extremely difficult to attain under absentee status.

My proposal is to place upon individual municipalities the responsibility of obtaining and maintaining systematic revision of rates on the basis of facts periodically assembled and analyzed. This corresponds with underlying realities. These are primarily and predominantly local. The properties are located, maintained, and operated within municipal borders and under local franchise grants. Operation is conducted through community streets. Service is furnished to the municipal corporation itself and to local industry, business, and homes. Rates impinge upon the city itself and upon its inhabitants. Discontent arises within the community and is inevitably directed upon municipal officials, whether or not they have formal jurisdiction and legal responsibility. Development depending upon low rates is local, and it has primary bearing upon the advancement and prosperity of the community. The entire situation is essentially local and requires consistent consideration from the municipal standpoint.

The furnishing of electric power is intrinsically a municipal function, especially in a city of extensive eco-

"My *proposal is to place upon individual municipalities the responsibility of obtaining and maintaining systematic revision of rates on the basis of facts periodically assembled and analyzed. This corresponds with underlying realities. These are primarily and predominantly local.*"

nomic and social interests. Adequate service at minimum cost is fundamental to all local enterprise and life. Its functional aspect is identical with that of furnishing community water supply, sanitation, streets, and other collective undertakings which are essential to the common welfare and ramify through all phases of community life. If electric power is provided through the instrumentality of a municipal plant, its public function stands forth directly and definitely. It is managed as a collective undertaking for the benefit of all interests in the municipality, including the municipal corporation itself.

THE basic situation is no different whether electric power is furnished by a municipally owned plant or by a private company intrusted with the extremely important public function. In either case the responsibility is to furnish adequate power at lowest attainable cost for all local purposes. In either case, the intrinsic duty of municipal officials is the same. This includes regular regard for all local needs and development, for all the facts of local importance, for systematic assembly and analysis of the facts, and for systematic readjustment of rates according to the facts.

Even under prevailing state regulation—where specific local responsibility is not placed upon municipal officials, and where the very existence of a state commission, with statewide jurisdiction, shrouds and nominally deprives local officials of powers over local service and rates—local responsibility nevertheless remains firmly imbedded and ultimately unavoidable. Because the function is local, municipal officials never entirely escape responsibility, in spite of absentee state provisions for regulation. First, they have their own corporate bills to pay. Second, they are the first to be hit with local discontent. As this develops it strikes city hall, and as it gains intensity it presses correspondingly upon municipal officials. It is seldom directed immediately upon the commission. If formal complaint is filed, the action starts locally and is usually conducted through municipal officials, who finally are not able to escape the force of local realities.

UNDER such actualities, cities have always participated in rate cases, though mostly spasmodically and not very effectively. To the modest extent that rate regulation has worked, its success has been due largely to municipal participation. Where cities have appeared and have made moderate preparation to present the public side, some success has been attained. Unfortunately, such participation has not been consistent, and preparation has usually been inadequate. Furthermore, after conclusion of a particular case, the city has subsided and then has let things drift as before. Usually the results have been far from satisfactory, due to cumbersomeness of procedure and to inadequate preparation. In practically no instances has there been assumption of continuous responsibility, regular assembly and analysis of facts, and periodical effort to obtain rate revision on the showing of facts.

In recent years, with extensive criticism of electric rates and with the increasing importance of low cost power for all community interests, there has been the growing realization of the intrinsic municipal function and

Municipal Failures in Rate Cases

"THE instances of gross municipal failure to obtain moderately satisfactory results from rate cases have been due invariably to poor initial planning, to improper and inadequate preparation and presentation of technical facts, and to lack of proper pressure for reasonably prompt determination. Both costs and time can be kept within sensible limits through intelligent planning and action."

of responsibility resting upon municipal officials for reasonable rates. Such responsibility, however, should be actively assumed, even though it is not directly provided for by law. In practically all instances, a municipality has the right to complain and to appear before the state commission for rate investigation. It has the right not only on behalf of the corporation itself, but of the inhabitants of the community, to represent the public before the commission.

Furthermore, it has the power to confer with company officials and to bring about rate adjustments through negotiation and agreement, but any such changes must be filed by the company with the commission for direct or tacit approval. It has a recognized place within the prevailing state regulatory structures, if only it assumes properly the responsibility and carries it to practical realization.

WHAT I urge, therefore, is that such municipal responsibility should be directly assumed, even within the existing state regulatory system. Any city should, first of all, obtain thoroughgoing surveys of local conditions to determine the reasonableness of existing rates. A preliminary investigation might be made of property valuations, operating costs, gross revenues, and other factors that enter into reasonable rates. Such facts can be properly attained without heavy cost for municipal enlightenment, when they are presented informally and do not have to be received and regarded through judicial proceeding. Upon such informal findings, an intelligent program of action can be formulated and carried out.

After such preliminary findings and consideration of what should be done, informal negotiations should be arranged with local utility officials. The facts can then be discussed across the table, without judicial technicalities and hindrances. If sensible agreement can be reached as to rate revisions, new schedules can be filed with the commission and they will be approved in practically all instances. The commission will usually have no objection if the company and the municipality are mutually satisfied, for such a happy situation is bliss to all regulatory officials.

The agreement should include also factual provisions for subsequent readjustment of schedules.

If, however, agreement cannot be reached through negotiation, then a program of formal rate proceedings should be adopted and carried out. This would include proper technical preparation of valuation, operating expenses, and other rate factors for judicial presentation to the commission. By careful planning, a course of action can be developed which does not involve prohibitive costs and can be carried out to reasonably prompt decision.

First, petition should be filed with the commission for a regular rate investigation. Arrangements can then be made, usually through informal conferences, for the company to supply an inventory of the properties, its own unit prices, its estimates of depreciation, operating expenses, and all other pertinent facts with respect to electric service in the community. Reasonable time limits can be fixed for supplying such basic information. This should then be taken by experts for the municipality and analyzed for critical testimony placed before the commission. Special spot-checks of the inventory should be made for the city; an independent set-up of unit prices should be prepared; the factors of depreciation should be assembled, and the amount of fully accrued depreciation evaluated; operating expenses should be scrutinized and unreasonable amounts eliminated; proper allocations should be established where necessary between local operation and other communities served by the company. Complete technical preparation should be made, and the facts and analysis should be properly presented to the commission. The city should follow the company after the latter's witnesses have been subjected to well-prepared cross-examination.

Such a program requires careful planning and skilled handling. It will also involve considerable cost, but thoroughly justified outlay in the light of public interest. The cost can be kept within moderate limits through intelligent planning and action, and it will be justified manifoldly by the results.

There has been much propaganda with regard to prohibitive cost of rate cases and their ultimate futility as to public results. There have been, indeed, notorious instances where rate cases have been dragged through years of time, with enormous cost and meager showing for the public. Such instances have been extensively publicized and used to frighten municipalities from undertaking rate cases. To a large extent such propaganda has been successful. There is widespread feeling among municipal officials regarding huge costs and futile undertaking. These impressions are fostered directly or indirectly by company interests, and usually the disposition is to bear the ills that are and not to fly to costly and useless trouble. Under such conditions, often minor rate concessions are accepted to avoid formal rate cases.

The instances of gross municipal failure to obtain moderately satisfactory results from rate cases have been due invariably to poor initial planning, to improper and inadequate preparation and presentation of technical facts, and to lack of proper pressure for reasonably prompt determination. Both costs and time can be kept within sensible limits through intelligent planning and action. But, when rate cases have dragged on, and when the public side has not been thoroughly prepared and presented, then, even if substantial relief to consumers is ordered by the

commission, there is impelling inducement upon the company to appeal to the courts. The commission's order may be predicated upon what it knows to be right, but it is not based directly upon a record which will stand close judicial scrutiny upon claims of confiscation. Judicial review discloses the factual inadequacy of the order, and the costly and time-consuming reduction in rates is nullified. This is the sorry history that has been oft repeated and stands as warning to municipalities not to venture against powerful corporate interests.

I HAVE participated in many rate inquiries on behalf of municipalities and consumers, and I have been often galled by poor planning, inadequate provisions for proper preparation, and, indeed, by profligate spending for non-effectual purposes. From my experience, however, I know that rate cases by municipalities can be properly planned and prepared, can be kept within moderate costs, and can be carried to reasonably prompt and moderately satisfactory conclusions.

Furthermore, if a proper record is made, the commission then has facts to go on, and can support its order upon appeal to the courts; but, where such condition exists, the company is not likely to appeal. Even in the rare instances where the commissioners have close affinities with company interests, they are nevertheless compelled by the force of facts and by the intelligent action of the city to recognize realities and to make their findings more or less accordingly. When, however, the record contains mere declamation and diffusion of immaterialities on the public side, the commission, first, has grave difficulty to make a reasonable order, and, second, to sustain it upon judicial review. Here has been the great travesty of rate cases with unsatisfactory public outcome.

IF a municipality assumes responsibility for proper local rates and service, it can either obtain, to start with, agreement for moderate rate revisions, or it can obtain substantial results through formal rate procedure, provided always that there is requisite planning, preparation, and action. Where, however, rates are greatly out of line with reasonable present costs, the city probably cannot obtain full immediate reductions to which the public is entitled. It should get first what it can through agreement or formal rate case, and should then proceed with systematic policy of regular ascertainment of facts and periodical revision of rates in accordance with analyzed facts. It should, of course, be fair to the company, but it should represent positively the local public interest in reasonable rates required for utilization advancement.

❦

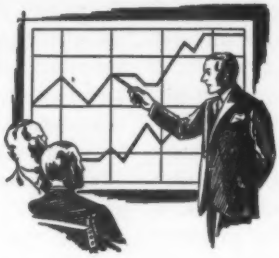
¶ "To *the modest extent that rate regulation has worked, its success has been due largely to municipal participation. Where cities have appeared and have made moderate preparation to present the public side, some success has been attained. Unfortunately, such participation has not been consistent, and preparation has usually been inadequate.*"

As a continuous program, the city should request from the company periodical filing of basic facts needed for successive rate revision. If the company is unwilling to furnish the data, the city can usually obtain a commission order requiring the desired reports. Duty should be placed upon a particular municipal department for assembly and analysis of the facts, and for comprehensive report and recommendations at the close of each year. These should indicate the extent of attainable rate reductions and desirable revision, and should be followed promptly by informal negotiation with the company. If an agreement is reached, new rate schedules can be filed with the commission.

If agreement cannot be reached, then the city should proceed again with a rate case on the basis of the facts developed during the year. This second inquiry, following close upon the first, can be greatly limited as to scope so as to cover only the additional facts. Preparation and presentation of the public side will be simplified, and will involve relatively little cost. The hearings can be expedited and a decision reached in short time. The order is likely to go uncontested, because it is predicated upon the previous record as well as the additional facts covering the relatively short interval. Similarly, at the close of every year there should be systematic analysis of the facts and regular action for rate revision. This would be largely a matter of regular administration, based primarily upon successive development of facts, without involving extensive opinion testimony and the common ramifications of rate inquiry.

The proposed course of action would essentially shift rate revisions from judicial hearings, with their inevitable technicalities and complications, to regular administrative standards and procedure. The basic valuation difficulty in ordinary rate cases would be practically avoided. When the "fair value" has once been established, including the reproduction cost new of the properties less depreciation, the rate base can then be readjusted annually by adding new capital outlays, deducting retirements, and providing for further accrued depreciation according to the accounting showing for the year. For such annual redetermination, the underlying conflicts of inventory, unit prices, and depreciation would be by-passed through the definite factual set-up. Unless there should be a tremendous shift in price levels from the one year to the next, there would be no occasion to revise basic valuation factors.

For the purpose of such regular rate administration by the municipality, there should be an initial set-up of inventory, unit prices, reproduction cost, and depreciation, according to the property classification provided by the commission's accounting rules. The city should start with a complete set-up of basic facts. Thereafter it should obtain at the end of each year all the local property additions and retirements by accounts, both as to dollar amounts and property units. It should thus maintain a complete inventory of the different classes of property used in local service, including the cost new and the depreciation. It would thus have all the factors for rate base, without reinventory and appraisal of the



The Sliding Scale

"An important aspect of . . . local responsibility appears in the so-called sliding-scale arrangement which has been extensively discussed in recent years as a device through which rates can be reduced regularly, with inducement for efficient management and with division of benefits between the companies and the public."

properties; to establish the rate base at the end of each year would be a simple technical matter. In addition, it should have other requisite local information to furnish the basis of rate revision and to show the developments and needs of the community, including at least the following:

1. Operating expenses, taxes, and other operating charges, subdivided within recognized classification.
2. Statement of salaries and wages paid to officials and employees engaged in local service.
3. Operating revenues, subdivided by service classifications.
4. Statistical statement of principal local activities and performance.
5. A budgetary statement setting out the prospective property additions and retirements and operating expenses to be incurred for the succeeding year.

With such facts systematically assembled and analyzed, and with regular administrative procedure, reasonable rates can be attained in relatively short time. If full reduction cannot be obtained through the first effort, the end of the first year will obtain further reductions, and the successive annual efforts will soon get rates down to reasonable levels. While such administration will involve some cost, this will be utterly negligible in relation to public interest involved and results obtained. All this can be realized within the present state regulatory systems, without enlarging the powers of the cities and without reducing jurisdiction of the commissions. It fits with present legal standards, provides for systematic administration, and places representative responsibility upon municipal officials with respect to fundamental local functions.

An important aspect of such local responsibility appears in the so-called sliding-scale arrangement which has been extensively discussed in recent years as a device through which rates can be reduced regularly, with inducement for efficient management and

with division of benefits between the companies and the public. Successful application of the sliding-scale method requires exactness of underlying facts as to rate base, operating expenses, gross revenues, and all factors that enter into reasonable rates. The company is permitted to keep whatever it earns under the adopted rate schedule, and it has thus the inducement for progressive economy and efficiency, especially for load development.

At the end of the year, the excess return over a *standard* percentage on the rate base is computed, and for the following year the amount is divided in a definite proportion between the company and the public; rates are reduced for the new year by the public share of the previous year's excess earnings above the standard percentage of return. The same administrative procedure is repeated at the close of each year. The company has the continuous inducement of economy and load building, but it shares regularly with the public the increased returns due to progressive efficiency and business development. With such definite administration and inducement for high showing of returns, rate reductions are rapidly realized and reasonable rates, with increasing consumption, are practically attained.

This is essentially the system which has been widely proclaimed as the so-called "Washington plan," with its well-known results, and its practical demonstration of what can be accomplished under definite standards, exact facts and regular administration.

Such general arrangements have been provided for in the statutes of some states, including Pennsylvania, during the past year. What, however, the statutes fail to take into account is the underlying requisite of definite rate base and other exact factual data for systematic administration. Under ordinary rate case proceedings by the commission, especially with reappraisals for the determination of fair value, the sliding-scale system cannot be properly administered, and it is bound to go by default in spite of statutory conveyances of power to the commissions.

Such arrangements, however, become practicable even under existing law, without specific grant of authority to the commissions, if the cities assume responsibility for local rate administration. Within the program outlined for regular municipal administration, provisions can be made for a sliding-scale policy. This can be set up factually, with a definite rate base and with other data essential to effective administration. When rates are adjusted at the close of a year in accordance with the plan, the new schedules can be filed with the commission, and they will naturally be approved if they do not exceed the levels prevalent in other cities of comparable size and conditions. Under existing law, such municipal administration furnishes the only practical course for establishing the sliding-scale method for realization of joint benefits for the company and the public.

So far I have been considering what may be accomplished by municipalities under existing state systems of regulation, if they assume positive responsibility. Further, however, I propose modification of the present régime by conveying to the cities the legislative power to fix rates in first instance.

While municipalities under present law can establish systematic rate administration, they cannot fix rates legislatively through local ordinance, except in some special instances. They must act within the state regulatory statutes, which impose the legislative power upon the commissions, subject to judicial hearing and procedure. While such municipal administration is attainable within existing rate policies, this comes far short of outright municipal power to deal legislatively with local conditions.

I BELIEVE that rate regulation could be made much more effective if the power to fix rates in first instance were conveyed to the municipalities, and if the commissions retained jurisdiction to review the municipal action. Such modification of the law could be readily attained; it would leave unchanged the general legal standards as to "fair value" and the rights of the companies, but it would lodge legislative power in the municipalities where service is furnished and where rates take effect. It would be consistent with the intrinsic local function.

With such revision, municipalities would not only assume responsibility for local rates and service conditions, but they would act *legislatively* upon the showing of facts above outlined. At the close of each year, they would enact new rate ordinances. While hearings would be granted, these would be legislative and not judicial in character. They would serve for information and for assurance of fair dealing, but they could not be used to strangle the processes of rate making. The rate ordinances would be purely legislative, and could be enacted promptly after the facts are disclosed and proper showing for revision is established.

IF the companies then considered the rates confiscatory, they could appeal to the commissions for review. This function would then be purely judicial, and responsibility of presenting the public side would rest upon the cities. These, however, would be girded with the facts and would be able to make proper records to sustain the ordinances. In most instances, there would be no appeal in the face of the facts. Upon appeal, there would be positive responsibility for public representation, and the cases could be rapidly disposed of with the showing of facts; there would be no default in public preparation, which is glaringly common under present conditions.

I believe that such delegation of legislative power and responsibility upon cities would produce great improvement in regulatory procedure. They could be readily carried out along lines previously presented. Such prac-

¶ "I BELIEVE *that there is increasing realization of local municipal responsibility for proper utility conditions. If this were to become general, supported with systematic administraton, rate making could be made reasonably successful, rates would be adjusted soon in line with basic costs, and utilization would be advanced for all desirable economic and social development.*"

tical functioning, however, would be largely limited to municipalities of considerable size. For smaller communities, it would probably not be realizable because of cost and inadequate technical personnel. The commissions, therefore, should retain their general jurisdiction over rates, except where local powers are actually assumed and regularly administered. In all other instances, the present prevalent situation would remain, but even these would have indirect advantage of standards established and accomplishment attained by larger cities.

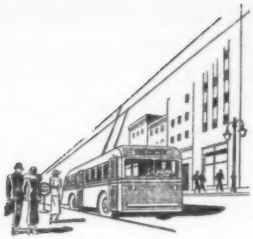
I have assumed throughout the continuance of existing standards of valuation and fixing of reasonable rates. But even if these basic factors were reconstituted, so that definite rate bases were established and rate control were lifted from the morass of judicial proceedings and opinion testimony, there would still be need for municipal responsibility and administration. In any case, the scope of state regulation is too diffused for specific local readjustments.

THE perspective presented is that of systematic administration, based on definite standards and exact facts, placing responsibility where it naturally belongs, and separating legislative-administrative action from judicial. While the latter must, of course, be provided for to assure fairness, if it is comingled with legislative and administrative functions, it leads inevitably to clogging up of procedure. If rate making is based upon legislative power and administrative standards, it can be carried out upon exact showing of facts. Furthermore, it thus provides intrinsically for fairness of action and thus practically precludes judicial proceedings.

Successful rate control, let me repeat, depends upon separate legislative power and systematic administration, without judicial combination. On such basis, it can be attained through statewide commission jurisdiction, but is much more readily realized through municipal assumption of responsibility or legislative grant of power to municipalities.

With such local arrangements, the work of rate revision becomes intrinsically administrative, even though it is legally effected through formal legislative action.

In conclusion, I wish to reëmphasize that public rate control over private electric companies can be practically established *under definite policy and regular administration*. Particularly under appropriate municipal action, it can be made reasonably effective. My object has been to present clearly and forcefully this particular aspect of rate regulation, which can be freed from quasi judicial futility and made a practical instrument of municipal policy. I believe that there is increasing realization of local municipal responsibility for proper utility conditions. If this were to become general, supported with systematic administration, rate making could be made reasonably successful, rates would be adjusted soon in line with basic costs, and utilization would be advanced for all desirable economic and social development.



New York's Transit Unification Keeps Marching On

Analysis and criticism of the commission's rejection of the Seabury-Berle plan

By WILLIAM G. MULLIGAN JR., JAMES T. ELLIS, AND JEANNE DE LUCA

THE transit unification question is making its controversial way along the sidewalks of New York, enjoying the benefice of popular discussion for almost the first time in its career. Underneath these very sidewalks the subway trains are roaring out deficits for the city treasury, just as they have been allowed to do during the quarter of a century since the dual contracts were signed. Obstructing traffic in the streets are the pillars of the uncompromisingly ugly elevated railroads, like an endless arch of triumph for anachronous techniques.

Unification, having stopped too long among wily politicos who misused it to serve their ends, is a stranger to most of the people, although it has been abroad for seventeen years. The legislature created it in 1921 to cure the ills of an "emergency"; but it is only through the present effort to bring unification about that this emergency, still robust and even growing, has come home to the taxpayers and the public.

A recent writer in these columns reported a part of the current unification scene: the reasons which the transit commission assigned for its action in rejecting the Seabury-Berle plan and agreement.[1] Approaching the same events from another oblique may possibly be fruitful.

In the statute which created the New York State Transit Commission in 1921, the legislature directed: "The commission . . . shall prepare a plan or plans for the relief of the emergency which is hereby declared to exist, and for the improvement of transit in such city. Such plan shall contain provisions which, in the judgment of the commission, *will accomplish as nearly as may be*" (1) the unification of the transit

[1] New York City's Transit Unification Troubles, by James Blaine Walker, September 16, 1937. p. 330.

lines under public ownership and control, (2) the receipt by the city of new revenues from their operation to defray the debt service on city bonds originally issued to build and equip the subways, and (3) "the continued operation of the railroads at the present or lowest possible fares" that will insure safe operation and enable consummation of the unification plan. Well may one emphasize the modest requirement of the statute that the plan accomplish these objects "as nearly as may be."

ONLY a tyro in the field would suppose that any unification proposal could render all the city's tremendous transit investment self-sustaining out of operating revenues while preserving a low rate of fare. For the Seabury-Berle plan it was claimed that about $9,000,000 a year would become available to help carry more than $30,000,000 annual debt service on past municipal transit investment. Yet, as debate waxes hot, the proponents of every plan must face the charge that their proposal in so far falls short of fulfilling the legislative mandate. The latest, the Seabury-Berle plan, did not escape this gantlet.

As originally enacted, the unification statute empowered the transit commission to accomplish unification without consent of the city's governing body, the board of estimate. The (then Republican-controlled) commission promulgated its first plan in 1921. Mayor John F. Hylan thought so little of this plan that he met it with a counter proposal of his own, demonstrating neatly that anyone with pen and paper can write a "plan," so long as he need not secure the companies' agreement to it. But Mayor Hylan and the Democratic board of estimate were in no peril that the commission's "plan" might go through: the transit commission had neglected to negotiate its terms with the private interests affected. Herein was set a dismal precedent, never upset by successors of the first commissioners. The "plan" was only an *ex parte* proposal; like all the commission's future progeny, it came to nothing.

NOT to be caught unawares again, the board of estimate went to Albany and induced the legislature to amend the statute so as to require the board's approval to any plan of unification. Political incompatibility between the board of estimate and the transit commission made approval quite unlikely, and so ended the first unification attempt. The three commissioners busied themselves with the B.R.T. receivership, with the I.R.T.'s financial difficulties, and with answering charges demanding their removal from office, filed by Mayor Hylan with Governor Smith. As Mr. Shakespeare validly observed, "An two men ride of a horse, one must ride behind."

When the terms of the transit commissioners expired in 1926, Governor Smith appointed an entirely new personnel. In the city, James J. Walker was presiding over a Democratic board of estimate. The governor had sponsored the new mayor in city politics. For eight years harmony was to continue between the commission and the board. In that period some seven separate unification "plans" were destined to be proposed. But there was to be no unification, because assent of the

private interests to any of the "plans" was never to be induced.

In 1931 the atmosphere of serenity was marred by internecine strife at the commission. In June of that year Samuel Untermyer resigned as the commission's special counsel with animadversions at the bland chairman of the city's board of transportation, John H. Delaney. Mr. Untermyer was succeeded by John J. Curtin, who has since served as special counsel. Just prior to Mr. Untermyer's resignation he had been at loggerheads with Mr. Delaney, and unification discussions got lost in a cloudburst of personal philippics.

In 1934, when F. H. LaGuardia and a Republican-fusion city administration took office, control of the transit commission continued in the reins of Democrats. Although both the commission and the new mayor were committed to unification, prospects of its accomplishment were narrowed as in 1921, for the steed had again two riders. A possible road to somewhere existed in a report, made by the commission in 1931 with concurrence of its special counsel, Mr. Curtin, which declared:

> [In the "plan" herewith promulgated] we leave the method of payment and the final fixation of price . . . to a possible agreement between the city (which is the real purchaser) and the companies involved.

Seizing upon this invitation, Mayor LaGuardia appointed Judge Samuel Seabury and Chamberlain Adolf A. Berle jr. to negotiate with the private interests as to price and method of payment, and so to galvanize the commission's "plan" of 1931 into an agreement. The city's new negotiators emerged in 1935 with an agreement upon these vital aspects, reached after two arduous years of trading, with representatives of all the interests in the Interborough Rapid Transit Company, the Manhattan Railway Company, and the Brooklyn-Manhattan Transit Corporation, the three corporations affected by unification.

In the spring of 1935 the B.-M.T. understanding had been reached and the Interborough-Manhattan negotiations were moving forward. Messrs. Seabury and Berle called upon the transit commissioners and their special counsel, to report progress and lay out a program. What they served upon the commissioners was the first accord ever reached with private interests for the unification of the properties. Not visibly moved by the achievement of agreement at long last, commission and counsel at once took the position that "clarification" of the B.-M.T. understanding was required. The city's agents meekly agreed to rewrite the 1931 "plan" to take in every

¶ "Only *a tyro in the field would suppose that any unification proposal could render all the city's tremendous transit investment self-sustaining out of operating revenues while preserving a low rate of fare. For the Seabury-Berle plan it was claimed that about $9,000,000 a year would become available to help carry more than $30,000,000 annual debt service on past municipal transit investment.*"

detail of the agreement they had reached. In ensuing months they traded out a similar understanding with the Interborough-Manhattan interests and got all representatives to adhere to a unification plan, meanwhile protesting that preparation of the plan was the job the commission was being paid to do.

Delivery to the commission of the Seabury-Berle plan and agreement, after first meeting a 90-day adjournment, eventually led to protracted hearings ending in the spring of 1937. Three months after hearings closed, the lengthy reports of the commission, rejecting the plan, were published.

It would not be profitable to analyze every one of the reasons given to justify the commission's rejection of this agreement. There can be no review of that rejection except by public opinion, for the absolute veto power of the commission is statutory. To the greatest part of the public the intricacies of such disputes are as dry as stale French pastry. But four or five of the criticisms emphasized most by the commission are provocative.

IN the September 16, 1937, issue of PUBLIC UTILITIES FORTNIGHTLY the writer stated:

> The sentiment for it [the 5-cent fare] is so strong that not even the Republican party in the city dares to advocate an increase.[2]

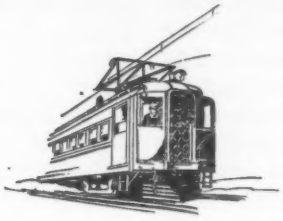
He then quotes the transit commission as stating that the Seabury-Berle plan contains "a subtle and ingenious method of bringing about . . . an increased fare." The chairman of the commission declared: "I have said this plan is a higher fare plan and I reiterate it." Plainly if it is true that no one, "not even the Republican party dares to advocate an increase" in the fare, it could not also be true that Messrs. Seabury and Berle did so in promulgating "a higher fare plan." There is something wrong here somewhere.

As a matter of fact the first statement is not altogether correct, for the Republican incumbent of the Queens Borough presidency, one George U. Harvey, is an open advocate of a higher fare. Yet Mr. Harvey has managed to get himself elected and reëlected to public office. But Mr. Harvey had nothing to do with the Seabury-Berle plan, and it may not be without significance that he never said a word in praise of it. That plan fixes the fare at 5 cents, subject to alteration only with the approval of the board of estimate. This guarantees that elected officials of the city would continue to have, as they now have, control over the rate of fare.

CRITICS of the provision in the plan, that the fare may be so altered, apparently do not know that quite apart from unification the board of estimate can increase the fare tomorrow if it is so minded; and that the 5-cent fare litigation of 1928-1931 was fought all the way to the United States Supreme Court to vindicate this control by the board of estimate.

The commission's suspicion of some "subtle and ingenious" design to increase the fare is pure piffle. Whenever public officeholders uncork the 5-cent fare bottle its contents seem to them to squirt and fizzle. To private citizens it seems that nothing is happening. Usually nothing is. Economists recognize that no unification plan, unless it

[2] New York City's Transit Unification Troubles, by James Blaine Walker, p. 330.



New York's Five-cent Fare Bugaboo

"WHENEVER public officeholders uncork the 5-cent fare bottle its contents seem to them to squirt and fizzle. To private citizens it seems that nothing is happening. Usually nothing is. Economists recognize that no unification plan, unless it proposed an outright fare rise, could jeopardize the 5-cent fare half so much as the rising tax budget for transit is already doing. While unification stalls, that budget zooms."

proposed an outright fare rise, could jeopardize the 5-cent fare half so much as the rising tax budget for transit is already doing. While unification stalls, that budget zooms.

THE transit commission said: "The price demanded by the private companies is excessive." Perhaps in anticipation of odious comparisons, the commission averred that the Seabury-Berle price does "not represent the total considerations flowing from the city."

The commission enumerated several additional "material considerations of the [Seabury-Berle] bargain." A check-list of similar "material considerations" of the commission's own "plan" of 1931 shows none missing save inclusion of the City Independent System. The Seabury-Berle plan provides financial unification of the City Independent System with the newly acquired properties as a substitute for a "material consideration" of the commission's 1931 "plan," *viz.*, that the proposed new securities enjoy a pipe line into the treasury of the city of New York. A city guaranty of the bonds of the new authority, advocated by the commission in 1931, was rejected by the draftsmen of the Seabury-Berle plan as contrary to the interest of the city. Mr. Samuel Untermyer added his legal opinion that such a guaranty would be unconstitutional.

THIS brings us back to comparisons:

In June, 1931, the transit commission and Samuel Untermyer, its special counsel, proposed that the city pay the companies $489,804,000.

In December, 1931, the transit commission and its special counsel, John J. Curtin, proposed that the city pay the companies $474,500,000.

Under the Seabury-Berle agreement

the city would pay the companies $436,157,220 gross, $416,583,220 net.

Influential in bringing civic and business interests to the support of the Seabury-Berle plan was its provision for immediate demolition of the worst of the traffic-impeding elevated structures. The desirability of attaining this end through unification was lucidly put by the transit commission itself in its "Memorandum Explanatory" of its own 1931 "plan":

> If the city after it acquires the lines deems it advisable to remove some of the elevated portions from the streets when adequate substitute facilities have been provided, it will be, in effect, relieved of the necessity of condemning the lines and paying the costs awarded by the court in condemnation, which for the one block of the 42nd street spur amounted to over $650,000. Apart from the obvious advantage, therefore, of operating a unified system, the city would, even if the elevated portions of the railroads were considered to be worth only their nuisance value, save large sums of money and be relieved of the delay and expense incident to condemnation.

In rejecting the Seabury-Berle agreement in 1937, the same commission proposed, as a substitute for unification,

> That the city exercise the power it now possesses to proceed with the demolition of the Fulton street elevated line in Brooklyn, and that, as fast as adequate substitute facilities can be provided, the remaining elevated structures be likewise demolished.

That the latter recommendation was intended to suggest recourse to the same "necessity of condemning the lines and paying the costs awarded by the court in condemnation," which in 1931 the commission had rejected as a counsel of despair, is apparent. The commission in its "decision" added,

> There is ample and full authority by existing laws for the removal of the elevated railroads by condemnation proceedings,

emphasizing its statement by printing it in bold-face type.

If wholly impartial testimony is consulted, it would appear that the commission was on sounder ground in what it said when advocating its own "plan" in 1931 than in what it said when condemning the Seabury-Berle plan in 1937. A report by a committee including Professors Lindsay Rogers, Joseph McGoldrick, and John Dickinson declared:

> The experience of the city in condemning a small portion of the Manhattan elevated amounting to about a quarter of a mile, in 1920, indicated that the compensation which would have to be paid in condemnation proceedings might amount to as much as $10,000,000 per mile.

From the point of view of the municipal budget, the monetary compensation resulting to the city from effectuating any plan of unification overshadows every other feature. The city's investment in rapid transit totals $1,100,000,000, more than the national debt of the United States before the World War. Return to the city from the operating revenues is, under existing circumstances, insignificant by comparison with the debt service requirements for the city's rapid transit bonds. In 1937 those requirements have totaled $37,400,684. It is estimated that in 1938 they will be $38,838,059; in 1939, $40,243,904; and that not until 1944 will the annual debt service spiral turn downward as debt retirement exerts its effect. Presupposing no additions to existing facilities, these are the burdens to be borne by the municipal tax budget, defrayed in only slight measure by intake from the operating revenues.

Through increase in the city's share of the revenues, unification aims at relief for the suffering tax budget. Such increase must be brought about princi-

pally by the readjustment of outstanding private funded debt in a refunding operation which will substitute public obligations longer in term and carry a lower interest coupon.

For the Seabury-Berle agreement the advantage was claimed that it so readjusted the outstanding funded debt as to move the city about $9,000,000 closer to the enjoyment of net operating income. That the Seabury-Berle proposal did so is simply a matter of arithmetic; whether the $9,000,000 gain would be realized in cash on hand was subject to dispute. That dispute revolved around the possibility that an upturn in operating expenses after unification might diminish the net operating revenues.

Rejecting the plan, the commission denied the likelihood of any immediate monetary gain. It said:

> The engineers and accountants of the commission . . . assert, and support the assertion by tables, that there would be an immediate monetary loss to the city of a minimum of some $470,000 annually.

We can test this pudding by a sample from the pot. It is true that since rejection of the plan operating costs have gone up. A study of actual operating results under the Seabury-Berle proposal, had it gone into effect at the beginning of the fiscal year ended June 30, 1937, was made; it took account of company pension payments, Federal social security and unemployment tax costs, restoration of wage cuts, and all other increased operating costs; and it allowed for all income (through taxes and otherwise) regularly received by the city from the properties without unification. Cash receipts to the city from the B.-M. T. and I. R. T. rapid transit and power plant properties to be acquired under the plan would have been $6,774,000. This is the amount of cash, not receivable without unification, which effectuation of the Seabury-Berle plan would have made available to the city last year under actual operating conditions at the 5-cent rate of fare. Of this figure one can say exactly what the commission said of the putative operating results under its own plan of 1931:

> Moreover in the above figures no amount has been estimated by competent officials head by reason of joint operation. This has been estimated by competent officials to be in the neighborhood of $2,000,000 a year.

Finally, there is the pungent question, just what is the transit commission's duty under the statute: is it to propose "plans" merely, or is it to bring about actual agreement among the contracting parties? If it is the latter, then the commission is a colossal failure, or worse, for it has existed seventeen years without itself producing an agreement, and has now rejected flatly the only agreement produced by others. The commission is the source of a rumor

¶ "In *1934, when F. H. LaGuardia and a Republican-fusion city administration took office, control of the transit commission continued in the reins of Democrats. Although both the commission and the new mayor were committed to unification, prospects of its accomplishment were narrowed as in 1921, for the steed had again two riders.*"

that it has power only to *propose* plans, for the companies and the city to accept or reject. But when in 1936 the city brought the companies into line the commission suddenly garmented itself in "quasi judicial" robes to sit in judgment upon the agreement that had been reached. That a recent contribution to these columns uniformly refers to the "transit commission *decision*," and that the commissioners themselves presented their reasons for rejection in the very format of judicial opinions, concretely illustrate this attitude.

The commission's quasi judiciality is a posture which it only assumed when faced with an actual agreement. In 1931 the commission took occasion to characterize its own obligations under the statute. It said:

> The commission is therefore in the unenviable position of having, *in obedience to the command of its superior*, the legislature, *to formulate an agreement between parties* no one of whom will state at this time what they will agree to.

SINCE by its own statement the commission's statutory duty is to formulate an agreement, one may wonder how its chairman found it possible to commence his "decision" upon the Seabury-Berle plan with the words: "There is before the transit commission *for judgment* a plan . . . " One may also find it puzzling that throughout the hearings individual commissioners took a position typified by the following statement of Commissioner Haskell:

> I am sitting here in a judicial attitude to hear and determine every piece of evidence that is available . . . I am entitled as a member of this commission, under my oath of office, to hear all of the evidence in support of this plan or against this plan and then come to a deliberate decision.

Within the abbreviated limits of the present discussion the writers cannot explore every advantage, or every criticism, of the Seabury-Berle agreement. Urging a study in greater detail, they can only embalm the classic caution of special counsel to the commission at one of the hearings on the Seabury-Berle plan: "As a necessary reason for any sane man to approve something, he should know what he is doing."

Phone Alarm for Air Raids

THE Italian government is trying out a new invention for giving the alarm in case of an air attack.

Devised by one Domenico Mastini, the alarm works through the house telephone, which in Italian cities, has an automatic dial.

Pressing a button in the telephone central automatically disconnects all conversations in course, and rings every telephone bell in town with any system of long and short rings desired. Sirens on housetops can also be connected.

Keeping Up with Uncle Sam

By FRANCIS X. WELCH

As we look back on the year 1937 from the Washington viewpoint of public utility regulation, we are impressed with the magnitude of important happenings. Court action took precedence, perhaps, over the activities of the legislative and executive branches of the Federal government in this field.

In truth, Congress passed over the utilities ever so lightly in 1937, in both the regular and special sessions. Not much in this line was before Congress and even this (to wit: the Lea bill to regulate interstate gas) was passed over by a Congress which occupied itself throughout a long and bitter regular session with the Supreme Court fight. The enactment of the Bonneville administration act had been generally expected for months.

Comparatively speaking, even the executive branch had other fish to fry during most of the past year. Not until recent weeks did the President revive the subject of public utilities and then he did so in a more conciliatory attitude than he has ever shown toward them. The year also witnessed the waning of PWA municipal utility plant financing, the softening of the SEC regulatory attitude, and the outbreak of dissension within the TVA. The FPC, FCC, and REA continued generally along lines already indicated before the year opened.

But the courts did make important utility history, especially during the closing days of the year. The disposition of the PWA test cases and Pacific Gas & Electric Case (both still pending) on original cost valuation are two landmark developments. Other important litigation, such as the Electric Bond & Share test case on the Holding Company Act and the multi-utility suits against TVA, may well be decided before the court recesses next June.

But it is not only of specific events, such as court decisions or bill enactments, that history is made. Probably the most important development to take place in Washington in 1937 was the revival of congressional independence and the regeneration of our American democracy. Here is the picture:

Congress is enacting a play in Washington these days. The name of the play might be called "Democracy Vindicated." It is not the first time on any stage. On the contrary it seems to be a revival of a popular favorite with a long list of successful appearances throughout the history of democracies.

Democracy is generally supposed to mean a rule by the people but of late it has gotten into pretty deep water, internationally speaking. There are its avowed critics, the dictators, who rant and sneer at democracy as an obsolete system of logrolling and grumble-bumble. Worse yet, there are its strange friends who think so much of democracy that they would stick its label on some of their own ideas of government which would effectively curtail the individual rights and liberties of the people.

In other words, democracy is besieged from within and without—by those who openly hurl grenades, and those who affably undermine its foundations with subversive innovations. Getting down to brass tacks, our own Federal government has since 1933 completed a cycle in "control emphasis," as the constitutional experts call it. When President Roosevelt was first elected, the people overwhelmingly demanded a new leadership. That was democracy under pressure.

When the President interpreted his mandate as grounds for seeking, and obtaining, quasi dictatorial powers under the First New Deal, the executive branch of our government became the dominant factor in government control. When the Supreme Court outlawed some of these measures, the judiciary became dominant. When Congress refused to allow the President to destroy the independence of the Supreme Court, it began to assert itself. That tendency has increased in recent months until today we can safely say that the legislative branch is once more dominant—the spirit of 1937.

Such a development is democracy of the highest order, because congressmen would not act the way they are acting if they had not received inspiration from their local communities. True, these reactions are regional and conflicting but the important point is that the people are once more thinking for themselves and their representatives are responding.

NATURALLY, that is a better brand of democracy than the granting of sweeping popular mandates to individual political leaders which was the spirit of 1936 as well as 1932. For if the Constitution is what the judges say it is, heaven knows the so-called "popular mandate" is what the politician in power says it is. The result may be democracy but you can't prove it. Remember that is the way Mr. Hitler finally came to power.

Of course, if most citizens of a nation are too limited or otherwise harassed to understand the issues, they are driven by necessity to this our-leader-knows-best type of democracy. Confused by conflicting argument, they turn to the personal integrity of a great leader as the most easily recognized virtue and hand over to him the fate of a nation on a blank check. As has been said of the South American republics, the idea seems to be to get a good strong man, give him all the power, and after a reasonable length of time, throw him out on general principles.

But our own American people have proven within the past few months that whatever they may have done under pressure of an emergency, they have no intention of letting the control of specific legislation get entirely out of their hands. They have proven that they are not satisfied with a Charlie McCarthy Congress and the present mess in Washington is the direct result.

And thus as we watch the milling snarl in Congress today, our natural reaction of impatience ought to be tempered by the thought that here is a vivid vindication of the old truth known by all who have abiding faith in the intelligence of the American people to run their affairs. If you show the light, the people will find the way.

THERE is a practical danger in the present impasse, which will bear careful watching. That is the possibility of another "emergency" hysteria if business keeps receding and Congress continues its present futile deadlock. Some observers claim that the President is biding his time against just such an event. Then he will take charge as in 1933.

But there are good reasons to suspect that several other courses are still open. First of all, Congress is quite likely to muddle through a legislative program somehow and leave the burden on the administration to administer it. Next, there is a small but intelligent bloc in Congress headed by Vice President Garner which has no intention of allowing the controls to slip once more into the hands of the executive. In self-defense this bloc is already working out a "steering" organization to stop the present battle royal in Congress with the sensible argument that if Congress does not work out a program the White House will take over the job.

Finally, there is the record of history which shows that the tendency of the American people in times of stress is invariably to throw out those in power, whether the latter are to blame or not. As a Republican Senator recently put it: "The American people have made mistakes before and will make them again, but so far they have never made the same mistake twice in the same place." Well, we'll see—in 1938.

Financial News and Comment

By OWEN ELY

Mr. Willkie Proposes Elimination of "Write-ups"

THE memorandum submitted by President Willkie of Commonwealth & Southern Corporation to President Roosevelt, referred to below, contained the following concrete suggestions as a concession to the President's views regarding "prudent investment":

(1) That the utilities immediately eliminate from their capital structures all write-ups heretofore claimed by the Federal Trade Commission.

(2) That the utility valuation under the rule established by the courts (including reproduction cost) apply either up to this date or to the date of the commencement of Mr. Roosevelt's first term as president, and that after such date and for the future the prudent investment method be adopted.

The Federal Trade Commission in its final report in 1935 estimated that in 85 per cent of the industry (18 top holding companies, 42 subholding companies, and 91 operating companies) there was about $1,491,000,000 in write-ups, improperly capitalized intangibles, and inflation indicated in the capital assets. Elimination of this total would reduce *average* utility capital by about 10 or 15 per cent, but the effects on individual systems might be considerably greater.

The list of so-called "write-ups" for the major systems, arranged in order of size, is as follows (in millions of dollars):

Electric Bond & Share Co. and affiliated systems	$352
Cities Service System	262
Associated Gas System	252
Southeastern Power & Light System	122
Middle West Utilities System	111
Columbia Gas & Electric System	102
Niagara Hudson Power System	82
North American and affiliated systems	51
Standard Gas & Electric System	45
New England Power Association and subsidiaries	39
United Gas Improvement System	24
Central Public Service System	15
Stone & Webster, Inc., and subsidiaries	8
W. B. Foshay Co. and subsidiaries	8
Tri-Utilities Corporation	7
Utilities Power & Light System	5

ACCORDING to an estimate by *The Wall Street Journal*, "it might be conservatively stated that at the present time the write-ups charged in the Trade Commission's report have been at least 50 per cent corrected and work in that direction is being continued." In the case of Cities Service Company, about 40 per cent of the total "write-up" should be chargeable to the oil business rather than the utility industry.

Careful appraisal of individual balance sheets will be necessary to analyze the possible effects of elimination of remaining "write-ups." In many cases this could doubtless be accomplished without any particular hardship to the holding company, since the consolidated system balance sheets usually contain substantial amounts assigned to stock equities and surplus. If the adjustments can be made without encroaching upon the par value of preferred stocks and bonds, it would seem advisable to make the readjustment as promptly as possible in order to remove any implication of inflated values, which (whether warranted or not) has always been a major talking point with critics of the industry. The utilities will then be in a stronger position to insist that the government itself follow a rigid and accurate method of cost accounting for its own properties.

The "Billion-dollar" Utility Program

PRESIDENT Roosevelt's talks with utility executives have undoubtedly produced a better feeling in utility circles. Floyd F. Carlisle has indicated that Consolidated Edison will begin immediately an expansion program calling for the expenditure of some $100,000,000 in the next two years, while Niagara Hudson will begin construction of a 100,000 horsepower steam generating plant and other projects. This is an auspicious beginning for the administration program.

Mr. Willkie's memorandum submitted to the President November 30th outlined an excellent basis for a working compromise between the President's views and those of leaders in the industry. In return for concessions regarding valuation methods, the administration is asked to modify the "death sentence" so as to permit top holding companies to remain (eliminating all intermediate holding corporations within three years); to set up the same cost accounting methods for TVA as those prescribed for private utilities by the FPC, with rates based on such costs; that municipalities should buy existing distributing systems (at an adjudicated price) rather than build new ones, and that they should not be aided by Federal gifts. He also proposed that disputes between the utilities and Federal agencies be submitted to the Federal Power Commission.

A bill is now being drafted by Senator King, it is reported, to repeal or modify the "death sentence"—which, it will be recalled, was incorporated in the Utility Act in 1935 by the margin of a single vote in the Senate.

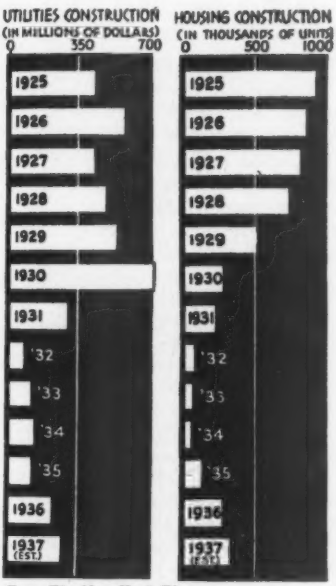
Arthur Krock, Washington representative for *The New York Times,* gives the following interesting "slant" on the President's viewpoint (in an earlier interview with Mr. Willkie):

> Having instituted TVA and stood by the policies of Commissioner Lilienthal against those of Chairman Morgan, the President is naturally loath to agree that these policies have paralyzed utilities refinancing outside the TVA area and prevented the spending of more than a billion in the heavy industries.
>
> Therefore he hammered at Mr. Willkie for an explanation why the sale of "junior securities" was impossible for utilities in territory far from where Mr. Lilienthal and his associates, under the legal pretext of insuring national defense and aiding navigation, are making and selling power in extremely unfair competition with private business. Since there was no government competition existing or threatened, argued the President, why the financing difficulty?
>
> "The general feeling," said Mr. Willkie conservatively, but in that polite phrase he said a mouthful. He put his finger on one of the major reasons for that uneasiness in the business and financial community which is making a big recession out of a little one. Casual inquiry reveals that Mr. Roosevelt would get about the same reply from hundreds of other business men whom he has as much reason to respect as Mr. Willkie.
>
> The only thing to fear, said the President once, is fear itself. That is another and more graphic way of putting what Mr. Willkie said to him yesterday. It is true that government has not extended the TVA structure to other sections. But constantly it gives the impression it would like to. And the Progressives in Congress, who have influenced the administration's power policy, are calling for this extension all the time. On several occasions the President has moved toward truce between the government and the utilities, on grounds fair to both enterprises, and he has encouraged hopes of "grid" and other sensible integrations. But each time he has permitted Mr. Lilienthal to extend his government ownership tendency. The result has been to frighten off intended investors and send chills down the spines of those who already hold utility securities.

FURTHER clarification of the administration's point of view and definite abandonment of the principal power-project features of the regional planning bill (already tentatively indicated) would go far toward stimulating decisions by utility executives to launch construction programs. Last summer a heavy building program by the industry seemed almost unavoidable, if a future power shortage was to be forestalled. Now, however, with electric output receding sharply and security markets temporarily closed even to refunding operations, the industry needs encouragement of a positive character. The elimination of unfair government competition, both present and future, would be a major step toward restoring confidence.

Utility construction, coupled with a

housing program, if quickly and diligently planned, would go far toward pulling the country out of its present "recession." While it is difficult to envisage the $1,500,000,000 utility program for 1938 considered possible by Mr. McNinch, it is obvious from the accompanying chart that even a $500,000,000 program (about the 1929 level) would be highly encouraging.



From The New York Times

Another Reorganization Plan for Standard Gas

THE fourth revision of the reorganization plan for the $900,000,000 Standard Gas & Electric Company has been drafted and presented to the United States District Court in Wilmington for its approval. The latest plan calls for registration of the system under the Public Utility Act. The company has obtained the court's permission to solicit acceptances of the plan from security holders; previous plans were scrapped before reaching that stage.

The new plan, following months of negotiation, had been approved by all of the note, debenture and bondholder committees, by the prior preference stockholders' committee, and by one of the two committees for $4 cumulative preferred stockholders.

Under the new plan the $24,649,500 6 per cent notes due October 1, 1935, are to be extended to a date ten years from the consummation of the plan, while the company's remaining funded debt ($49,000,000 debenture 6s) is to remain unchanged. Two sinking funds are to be set up, applicable to both notes and debentures. One is to be payable out of earnings, the other from transactions in capital assets. Provision is also made for the security of these obligations in the event of the creation or assumption of additional debt.

It is hoped that an optional offer to security holders will permit reducing the funded debt about one-half. Each $1,000 principal amount of notes and debentures may be exchanged for $500 new sinking fund debenture 4½s due in twenty-five years, together with equities in subsidiaries as follows: Twenty-five common shares of the Philadelphia Company, two common shares of the Pacific Gas & Electric Company, and three common shares of the San Diego Consolidated Gas & Electric Company (after a four-for-one reclassification of the latter stock). There also would be attached to each $500 of new 4½ per cent debentures a warrant to buy ten shares of Philadelphia Company common stock at $15 each for ten years after issuance.

STANDARD Gas issues are currently selling around 58. Assuming that the 4½s are worth a similar value, scaled down for the reduction in coupon rate, the $500 piece received by the holder of a $1,000 debenture or note would be worth approximately $215. Twenty-five shares of Philadelphia Company at the current price around 7½ would give an additional equity of $188, and the two shares of Pacific Gas would add about $52. Since there is little or no market for the very small amount of San Diego stock in the

hands of the public, it is difficult to appraise its value, but based on the 1935-36 earnings capitalized on a "twelve times" basis, the additional equity would be in the neighborhood of $83 a share. Judging from other market values, the two Philadelphia warrants might be worth in the neighborhood of $25 apiece, which would bring the total estimated value of the new securities to about $588—fairly close to the current market price for the notes and debentures.

The plan does not change the status of the present prior preference, preferred and common stocks, except that all issues will have voting powers.

The plan sanctions the appointment of a special trustee to handle the Delevan Corporation litigation (the original suit was for $100,000,000 damages for past financial "abuses" and the court recently refused to permit a compromise settlement of $1,000,000). Ex-Senator Hastings has been appointed special trustee.

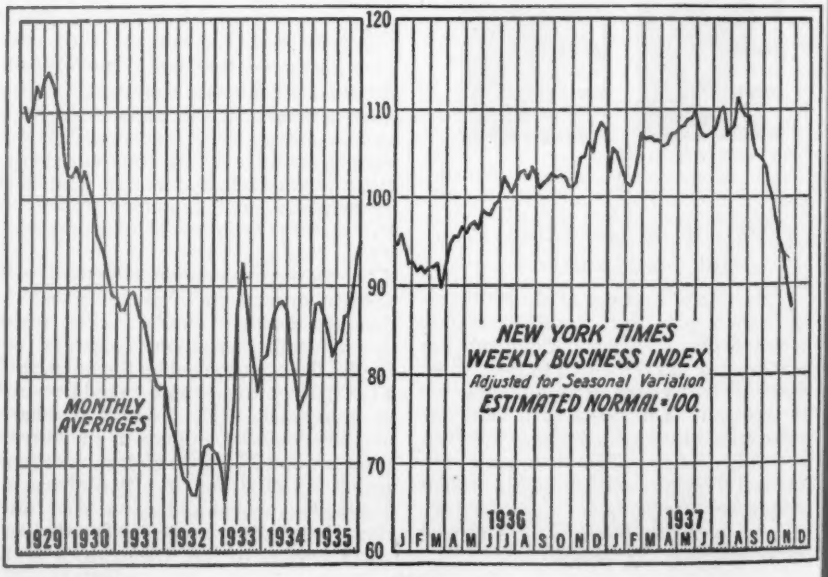
The SEC will not have jurisdiction over the plan until the system is registered under the Utility Act of 1935.

Standard Gas & Electric, for the twelve months ended September 30th, reported consolidated net income of $4,490,410, compared with $3,251,265 in the preceding twelve months. At the same time gross revenues of the system rose to $102,353,879 from $95,168,789.

Business Declines Six Times As Fast As in 1929-30

IN the three months from September to November, business activity has dropped almost as much as in the year and a half between July, 1929, and February, 1931—thus the decline has averaged about six times as fast(see accompanying chart of *The New York Times* Weekly Business Index). Half the ground laboriously regained in the five years since 1932 has been quickly lost.

It seems highly probable that the downward plunge of the business index will now be checked by at least a tem-



porary gain in steel operations, down from 80 to 30 per cent. Since the stock market has for many years followed the general pattern of steel operations, any such recovery should be accompanied by an improved tone in security markets. Action of both commodity and security markets in the past few days indicates the probability of such a rally.

Events at Washington are mildly encouraging, but the administration's program for aiding business is somewhat offset by other activities or attitudes, such as the antitrust drive proceeding in several fields, the legislative priority given such measures as the wages and hours bill, delays with tax readjustment, continued SEC criticism of Wall Street, etc.

Corporate News

YORK Railways Company, subsidiary of the Associated Gas & Electric system, has filed a voluntary petition for reorganization under § 77-B, due to maturity of its 5 per cent mortgage bonds December 1st. The outstanding amount of bonds has been reduced from $6,116,000 to $5,000,000 in recent months, and an offer of extension for ten years has been proposed to holders of the remaining bonds. The public utility commission of Pennsylvania in a recent decision authorized extension of only $3,300,000 of the bonds. While the company took the issue to the courts, obtaining a preliminary injunction from the Court of Common Pleas at Harrisburg, Pa., the time was too short to arrange with bondholders for the proposed extension.

The company now offers holders an alternative proposal for an exchange of $700 Metropolitan Edison bonds and three shares of its $6 preferred stock for each $1,000 York Railways bond. This, however, is contingent on obtaining permission to transfer the company's electric and steamheating properties to the Metropolitan Edison Company, another Associated Gas subsidiary.

Long Island Lighting Company and its subsidiary, Queens Borough Gas & Electric, have cut their preferred dividends in half and announced drastic economy programs. Vice President Edward F. Barrett, in a letter to stockholders, cited the New York state 2 per cent tax on gross revenues, costing the Long Island some $240,000 per annum, as well as $200,000 increased labor costs and $180,000 pensions, etc. In addition, Long Island is no longer receiving $290,000 dividends from Kings County Lighting. Savings from refunding operations afforded only a partial offset.

Earnings of Hudson & Manhattan Railway Company during the current half of the calendar year may prove sufficient to justify payment of another semi-annual instalment of 1¾ per cent on the adjustment mortgage 5 per cent bonds. This amount had been paid semiannually during the past two years, the last disbursement being October 1st. Electric interurban revenues have continued to run ahead of last year although the rate of increase is now diminishing. Rentals in the two terminal buildings are now showing a moderate uptrend, although higher costs and structural changes have more than offset the gains. It is generally expected that the company will win its application for a 10-cent fare between Jersey points and lower Manhattan, hearings on which begin before the Interstate Commerce Commission January 18th. The management is counting on the increase, not only to absorb current increased costs, but to meet wage increases which may prove necessary in the near future, when labor contracts come up for renewal.

COUNSEL for the Interborough Rapid Transit Company receiver has sought disaffirmance of the Manhattan Railway Company lease before Federal Judge Mack, being opposed by both the city and transit commission. Counsel for the commission questioned the court's power to authorize abandonment of the franchise. The question whether the extension certificate, joint trackage agreement, and contract No. 3 (under which the company operates the subway) constitute a single contractual relation,

which could be disaffirmed only as a whole, is also an issue.

United Gas Corporation, subsidiary of Electric Power & Light Corporation, has completed a program of corporate simplification embarked upon five years ago. This has resulted in the elimination of about 40 subsidiary or intermediate corporate entities. The final step was the absorption of United Gas Public Service Corporation. The new corporate set-up is expected to simplify relations with various state and Federal regulatory bodies. The company and its seven subsidiaries now each have definite functions. The parent company handles all distribution activities, Union Producing Company is in charge of oil and gas production, United Gas Pipe Line Company and United Oil Pipe Line Company control transmission of gas and oil, etc.

Utilities Power & Light Corporation continues to suffer from contention between the several groups interested in its affairs. The Associated Gas interests have been enjoined by Federal Judge William H. Holly from sending out (through a protective committee) any general communications without first obtaining the court's approval. The company continues to hold a large amount of cash resulting from the sale of British properties, and receivership appears due primarily to the struggle for control and the right to dictate the method of utilizing the cash.

PRESIDENT McCarter of Public Service Corporation of New Jersey has indicated in connection with subsidiary merger plans that the company plans to shift from street railways to bus lines, establishing the most extensive bus service in the United States. He also indicated that merger of nine electric and gas subsidiaries would permit further rate reductions.

The annual meeting of stockholders of the Interborough Rapid Transit has again been adjourned to December 22nd because of lack of a quorum. In response to a stockholder's inquiry, the chairman indicated that the system's lack of adequate cash would be remedied if Judge Mack and the bondholders would permit suspension of sinking fund contributions. Two directors' committees are working on unification plans and the Manhattan controversy, he said. October traffic fell 5 per cent under last year and the balance after rentals dropped heavily into the red as a result of increased costs.

Stone & Webster, Inc., is the first large utility holding company to relinquish control of its utility subsidiaries and thus cease to be a holding company under the Utility Act. The company will continue its important engineering and construction activities, advisory services, etc. On December 16th a special meeting of stockholders will be asked to approve distribution of the company's holdings. Under the plan Stone & Webster stockholders would receive four-fifths of a share of the common stock of Engineers Public Service Company and one-tenth of a share of the common stock of Sierra Pacific Power Company for each share of stock of Stone & Webster, Inc., held.

The Securities and Exchange Commission is considering a reorganization plan of the West Ohio Gas Company submitted by a committee representing holders of the first and refunding 6 per cent bonds. The company is a subsidiary of the Midland Utilities Company, in turn controlled by United Midland Company, a former Insull company.

The government's suits against Western Union Telegraph Company and Postal Telegraph-Cable Company appear to be part of the general "antitrust" program recently initiated by the administration. The suit against the wire companies seems largely concerned with railroad rights-of-way for telegraph lines. A consent decree, if agreed to by the companies, would benefit Postal Telegraph, it is said, since the company has been forced into a leasing program because of similar action by Western Union.

The Utility Operators Company has registered under the Utility Act, and has applied for approval of acquisition of securities of Federal Water Service Corporation (its only subsidiary), in connection with the latter's reorganization.

What Others Think

The New York Power Board Defends Hydro

COINCIDENTALLY, or otherwise, President Roosevelt chose the very period (indeed almost the very hour) while he was negotiating with executives of the private power industry for more harmonious understanding, to send to congressional committees and agencies of the Federal government a report by the New York Power Authority charging "widespread propaganda" by utilities in the matter of comparing the relative economy of hydro and fuel-generated electricity.

Asked why the report prepared by a New York state agency and financed by New York should be submitted to the President and made public at the White House, Frank P. Walsh, chairman of the authority, said that its organic act required that it coöperate with the President and with Congress.

The President made the same reply when asked about this matter at his press conference. It could not be learned whether the study had been undertaken at the President's request although it was established that he and Mr. Walsh discussed it a week previous.

Taking specific notice of the recent releases by the Committee of Utility Executives of data tending to show that the vast government hydroelectric developments are more costly per electrical unit than steam power plants, the Power Authority's report declared that the utility experts had "grossly" exaggerated the costs of the public projects and "grossly" underestimated the costs of private steam plants.

The President's letter to the interested Federal agencies termed Mr. Walsh's letter and the report of the Power Authority "extremely interesting." He said:

> I am enclosing for your information an extremely interesting letter and report on Government Hydro *vs.* Private Steam Power from the trustees of the Power Authority of the State of New York.
>
> In view of the widespread publicity given to statements and figures issued by private individuals or private committees, I believe that this report will be of interest and help to you and to the public.
>
> It is in the public interest that if there are two sides to any question, both sides should be fairly and freely laid before the public. Conclusions and figures submitted by the Power Authority of the State of New York are so amazingly different from the conclusions and figures heretofore given out by certain private interests that I feel certain that they may be considered to be of national concern.

IN the report and in Mr. Walsh's letter the fact was stressed that the contentions of the utility interests should be answered in the interest of the proposed hydroelectric development along the St. Lawrence river waterway, which the Power Authority is to make under the plans. Mr. Roosevelt was identified with the Power Authority as governor of the state and has kept in close touch with it ever since.

Both the report and Mr. Walsh's letter of transmittal traced four steps in the "misleading propaganda" which motivated the study as follows:

> 1. A report of the United States Chamber of Commerce referring to the "popular misconception that hydroelectric power is much cheaper than fuel-generated power" and containing figures covering fourteen Federal hydroelectric projects.
>
> 2. A paper read by F. F. Fowle, former consulting engineer for the National Electric Light Association, before the Midwest Power Engineering Conference. The paper, the authority said, reached erroneous cost figures and thus "the appearance of technical support was given to the chamber's pronouncement."
>
> 3. A. A. Potter, dean of the Purdue School of Engineering and a member of the Edison Electric Institute Prime Movers Committee, quoted Mr. Fowle's paper in

writing the section on power in the Report on Technological Trends of the National Resources Committee, quoting Mr. Fowle's figures of costs with the insertion of his own words that they represented costs "under ordinary conditions." Mr. Potter's only comparison of steam and hydro figures was drawn from Mr. Fowle's paper, "thus creating the appearance of government recognition of these figures," said the report. Subsequently in the article, Mr. Potter "admitted a higher range of steam figures than those of Mr. Fowle," the report added.

4. The Committee of Utility Executives, headed by Philip H. Gadsden, in August issued a pamphlet using "selected excerpts" from Mr. Potter's report to show that "administration experts declare water power is more costly than steam." This pamphlet was generally circulated last September just before the President left to inspect the huge Federal dams at Bonneville and Grand Coulee.

It does seem a little surprising in a technical report presumably devoted to an analysis of facts, rather than of personalities or motives, to see so much stress placed upon the former associations of Messrs. Fowle and Potter with the private power industry, notably through national electrical trade associations. Whether the implication of bias was premeditated or otherwise, almost any reader of the document, engineer or layman, is bound to get the impression that professional bias on the part of these two noted engineers is being suggested.

AND this brings up an interesting question. The American people have become used, by this time, to the frequent implication by certain antiutility spokesmen, inside and outside the New Deal, that anyone who has been connected or associated with the private power industry is to be automatically suspected whenever he presumes to speak on power policy or economics. But when one stops to consider the matter, where can one find an expert qualified to speak on such a technical subject who has not been trained in the industry?

Here in America we have a private power industry serving about 90 per cent of the electrical business with the remaining 10 per cent widely scattered, mostly among small plants, and much of it relatively new. There are notable exceptions, of course. Dr. Arthur E. Morgan, chairman of the TVA, Bonneville Administrator J. D. Ross, E. F. Scattergood of the Los Angeles Power and Light Bureau, and a few others are surely able men in their field and trained for the most part in public service.

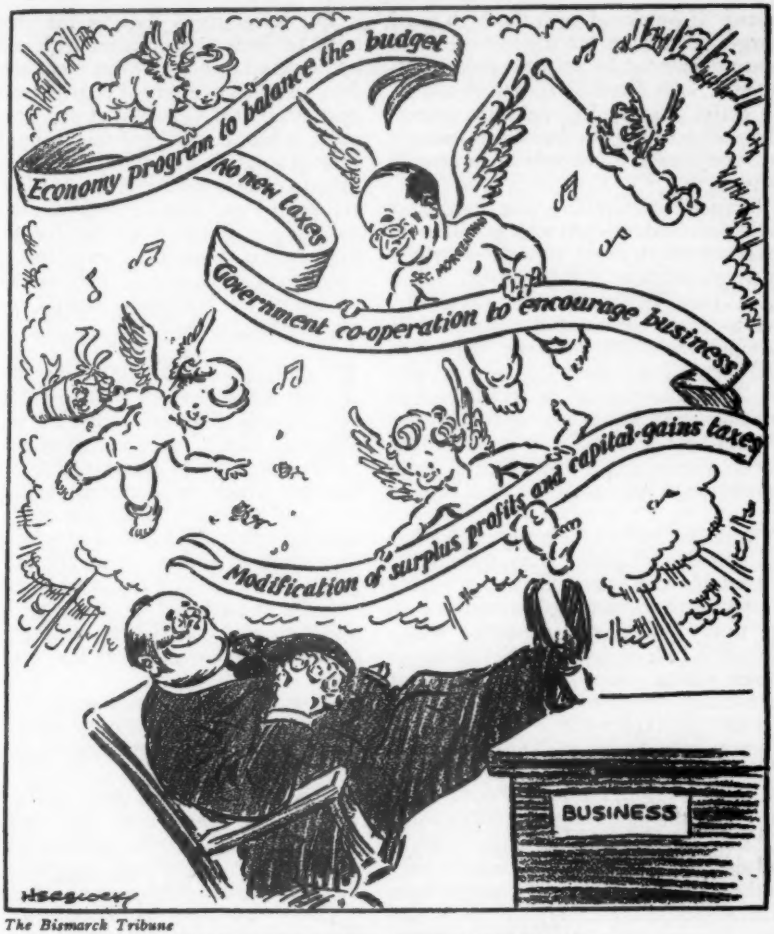
But the very recital of such a list emphasizes its smallness. It is only common sense that we must, generally speaking, look for qualified power experts to the power industry, just as we must look for textile experts to the textile industry, or for railroad experts to the railroad companies. Viewed in this light, the selection of such distinguished and nationally known hydro-power experts by the technological section of the National Resources Committee would seem almost a choice of necessity and even implied condemnation of it unreasonable.

There is the alternative, of course, of recruiting a technical staff practically fresh from the laboratories of the technical institutions. But such a course smacks of getting a group of hospital internes to judge the work of veteran surgeons.

THE New York Power Authority's report dealt extensively with the published contentions of the utility companies and their experts. Running with tables and appendices to 77 pages of mimeographed matter, the report dealt chiefly with the "gross exaggeration" and "understatement" of Mr. Fowle, but also accused Mr. Potter of misquoting Mr. Fowle and thereby making a misleading statement more misleading.

Mr. Fowle's figures, as repeated by Mr. Potter, of the cost of 4 mills per kilowatt hour for steam plants under the most favorable conditions, as against 6.3 mills for hydroelectric plants under the most favorable conditions, were contrasted in the report with the Authority's findings of 5.2 mills for steam power and 2.1 mills for water power.

The Power Authority's report contained a table contrasting the two findings as follows:



The Bismarck Tribune

"IF I'M DREAMING, DON'T WAKE ME"

	Cost of Energy	
	Mr. Fowle's Assumptions,	*Correct Assumptions,*
	(Mills per kilowatt hour)	
Private Steam Power (a)—		
Mine mouth plant	4.0	5.2
With $2.50 coal	4.5	5.6
With $4 coal	5.4	6.3
With $5 coal	6.0	6.7
Government Hydro (a)—		
Generating cost	6.3	2.1
Transmitted 50 miles	8.0	2.9
Transmitted 100 miles	8.2	3.0
Transmitted 200 miles	8.7	3.3

(a) Mr. Fowle's assumption of 50 per cent load factor operation together with his assumption that there will be no market for secondary energy have been accepted for purposes of comparison.

Furthermore, the report went on, the use of national credit to finance a "general water resource conservation program brings a wide range of natural power resources within the limits of economical development."

This power, large and small, must be

wasted "if burdened with the high fixed charges resulting from the so-called fair return demanded by private power companies." Since fixed charges were almost the entire cost of hydroelectric power, "the ability of the government to finance such projects at a low rate of interest is decisive."

"Scores" of water-power resources could thus be developed with government financing which could furnish electricity much more cheaply than private steam plants, provided the allocation for power, and to power alone, fell within limits "ranging from $269 for large 50 per cent load factor developments to serve a market 200 miles distant in which coal is available at $2.50 per ton, up to $509 for a small base load plant to serve a local market where coal is available for steam generation at $4 a ton.

THE Authority also asserted that hydroelectric plants were thoroughly dependable and satisfactory as a source of supply and disputed assertions in the utility executives' pamphlet which stressed a lack of dependability in water-power plants, citing the possibility of correlating groups of water-power projects and the experiences of the Niagara-Hudson subsidiaries in New York; the Montreal Light, Heat and Power System, the Ottawa Light, Heat and Power Company, and the public system in Ontario.

All of these are hydroelectric systems and the last named gives the lowest rates on the continent. Private companies have rates substantially lower than the steam rates in comparable cities in this country, the report said.

The report also stressed what is termed the "intangible value" of public hydroelectric systems such as flood control, navigation, and irrigation. It stated:

> The attempt of the Committee of Public Utility Executives to treat it (the government hydroelectric plan) as an entirely separate plan divorced from this all important conservation program is not only lacking in realism but an ill-concealed effort to protect vested interests in excessive charges for electricity.

The lower fixed charges for government projects as compared with private hydroelectric undertakings were also in favor of the government projects, the report continued. Ability of the government to finance at 3½ per cent or less contrasted strongly with the insistence of the private companies that they should get a return of 7 per cent on their investment, and in actual practice "the consuming public has frequently been forced to carry the capital cost of modern stations on top of the continuing capital cost of superseded plants."

IN analyzing Mr. Fowle's paper, the report alleged errors which resulted in false figures. One error claimed was an alleged failure to make any allowance for reserve capacity of steam plants, an allowance which the Authority said must be made normally at 25 per cent. The statement that plant cost at present could be figured at $85 per kilowatt was disputed on the ground that a survey of 33 recently constructed or proposed steam plants showed that $93 per installed kilowatt was the lowest figure that could be taken.

As to Mr. Fowle's estimates of hydroelectric cost, the Authority took issue with his use of the total cost of government dams.

Elimination of such items as the canal at Boulder dam and the irrigation ditches at Grand Coulee reduced his cost estimate for proper rate purposes, the authority contended.

Other mistakes attributed to Mr. Fowle were his estimates of the ratio of dependable power capacity to total power installation which was called too low and his assumption that the Federal government projects should carry fixed charges for rate purposes, based on the same return as that expected by the private utilities.

—E. S. B.

REPORT by the Power Authority of the State of New York. Transmitted by the President of the United States to the 76th Congress. November 23, 1937.

Antiutility Attitude of the Administration Attacked by a Democratic Senator

SENATOR Josiah W. Bailey of North Carolina has long been noted for the independence and conservatism of his brand of Democracy. During the current special session of Congress, however, Senator Bailey has been unusually outspoken in his criticism of various New Deal policies, among them the administration's utility policy.

Because this is about the first time since 1933 that a Senator of the majority party has openly attacked the Federal power program, as such, on the floor of the upper chamber, and in view of the pending negotiations between the administration and private utility interests for a more harmonious understanding in the interest of national recovery, a few excerpts from Senator Bailey's speech of November 17th should come under the heading of general education. The Rural Electrification Administration first drew the North Carolinian's fire when he said in part:

> I am giving specific instances because I do not think generalities go very far. I am coming back to my state of North Carolina. I will tell the Senate a story concerning the REA, the Rural Electrification Administration. I know every word of it to be true, and I know it from the record. A group was formed of farmers in Johnston county, N. C.—which is a big county full of fine little towns, and successful farmers, too—to bring about the construction of electric lines in that county. The farmers applied to the Rural Electrification Administration. The Rural Electrification Administration wrote that they would let them have $189,000, but they could not give them assurance that they would have another dollar.
>
> These people needed about $230,000 to $250,000. They went to the local power company, the Carolina Power & Light Co. I know that a man runs a risk of his political life here by mentioning the power companies, but I am not ashamed to mention the power company. That power company has been operating in my city, I should say, for forty or fifty years. Everybody connected with it is a respectable person. They have reduced their rates constantly, and I should be ashamed of anyone who is afraid to stand up in the Senate and say anything about a power company.
>
> As I said, these farmers went to the power company, and the power company said, "Yes; we will build you a line." Hear me, Senators! The company said, "We are going to build a line," and they went ahead to build it, and the Rural Electrification Administration tried to stop them, and actually wrote to me saying that if we did not change our policy they would withdraw every cent of money from North Carolina. I told them to go ahead and do it and spend it somewhere else. I was not going to yield to anything like that. The man who had charge then got out. I thought the new one would do the work better. The line was finally got going down there, about 300 miles of it. I think altogether about $325,000 was spent upon it. The farmers are happy. Everybody is satisfied. Everyone is looking forward to getting the power and light at very low rates; and the Rural Electrification Administration up here wrote to me again and said they would have to change their policy in my state unless our people, our farmers, stopped inducing the company to build this line.
>
> What sort of encouragement is that to private capital? I am told that the power companies of America are ready today to invest $2,000,000,000 in electrical development in this country. If they are, let us pursue a policy that will encourage them to do it. I do not mean to give the country over to them; oh, no; but let them have the fair return of which the President spoke, a fair return upon the reasonable investment of their capital. Let them understand that nobody can take it away from them; let them understand that the Federal government will not compete with them; let them understand that the money they invest is theirs; that the money the stockholders invest is theirs; and we will see the money come out and be invested. That is the only way it can be brought out.
>
> An effort was made to enjoin the building of that line down there by the national authority, but finally they got it built. The power company went right on until they built the line, and it is now finished. I think there is some sort of a suit about it now pending. This is my point about that—you cannot have the Federal government trying to keep the power companies from building lines in Johnston county and at the same time expect the power companies to float stocks or sell bonds or build lines. It is necessary to go one way or the other.

ANOTHER recent incident in North Carolina caused Senator Bailey to

turn his fire on the Federal Power Commission. He said:

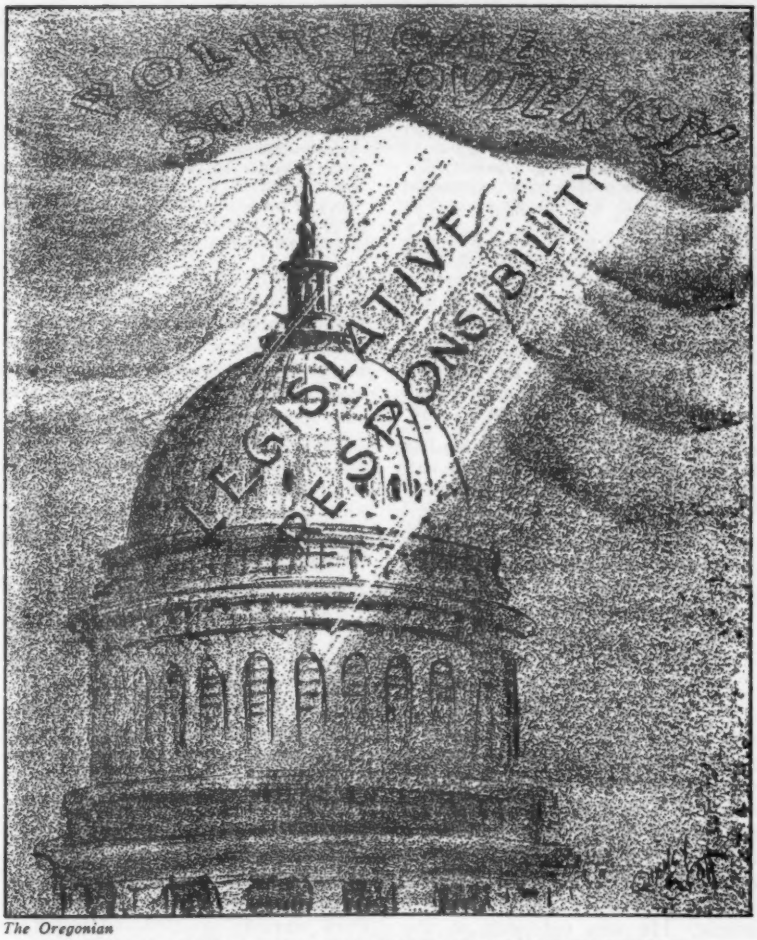
> We have a river in North Carolina called the Yadkin, which flows from away up in the northwestern part of the state in Wilkes county down to the southern border and then widens out and empties into the sea in South Carolina. Since the good Lord made this world no human being has ever been able to navigate that river. It can hardly be waded, it is so rocky, much less traversed by a boat. There are five dams up the river and one down here—great big concrete dams —because of the great descent from the mountains to the sea the water constantly falls, and there is much power. A great corporation bought a dam site at a place called Tuckertown. That was within the last six months. The place called Tuckertown had four dams below it toward the sea and one dam above it. The corporation wanted to invest $6,000,000 at Tuckertown. The people of North Carolina wanted them to invest that $6,000,000; our state and our counties wanted to tax that $6,000,000; the workers wanted to work to get that $6,000,000; the concrete interests wanted to sell concrete for the $6,000,000; but what, Mr. President, do you suppose happened? The power commission up here set up the theory that, by some remote possibility, that river might be navigable, and so the project is undeveloped to this day.
>
> How, in the name of Heaven, Mr. President, do you expect capital to be invested under such circumstances? If you think what I have said is a fairy tale, go down and inspect the record. I have watched it week after week and month after month.

Senator Burke of Nebraska intervened at this point to observe that the probable basis for the Federal Power Commission's jurisdiction was that whereas a river may not be actually navigable at a certain point, if it is a tributary whose flow substantially affects real navigability further downstream, the FPC's jurisdiction attaches. Senator Bailey replied:

> The Yadkin river might be navigable down in South Carolina, but they could not find that anybody had ever navigated it. But suppose they had proved it was navigable in South Carolina. There are already five dams built, and one more dam at the site to which I have referred would not make it any less navigable. I am not complaining about that; that is not the point. I am using it, however, to illustrate the contention that we have got to change the national policy if we want capital invested as the President asks be done. That is my point. That is up to us. We can do that.

Next in line for Senator Bailey's criticism was the TVA. This also was based upon a situation arising in North Carolina—specifically, the attempt of the Aluminum Company of America to build a dam across the Nantahala river. Senator Bailey said he favored this project because, in his opinion, the people of North Carolina would be benefited thereby through resulting employment and increase in taxable wealth within the state. He said:

> This company wished to build across the Nantahala river a dam higher than the Washington Monument, a dam which would compare favorably with some of the western dams the government is building and which I read about in the newspapers, a dam 570 feet high. I would hesitate to say what a tremendous lake it would create and what power it would develop, but I know, from an examination made here in the Congress, that that dam would assure 100,000 horsepower at Muscle Shoals free of charge to the government without any trouble. The corporation wished to build the dam and spend over $20,000,000. It has been trying to build that dam for three years. What happened? The TVA found that the corporation had that dam site in that valley; that they had bought all the land except 62 acres in one place and 12 in another, and the TVA bought those two tracts. A dog-in-the-manger policy stopped the investment. That is what happened.
>
> Some Senators may remember we passed a bill to correct such a situation. It was corrected right here in the United States Senate, and I thank the Senator from Nebraska (Mr. Norris) for aiding in that effort. After a hearing, he saw the unfairness of it. But have they built the dam? No. The Nantahala happens to run into the Tennessee river, and the Tennessee river runs to Muscle Shoals. There is an interminable debate down yonder concerning the power business by the TVA, and as to what can be done. The consequence is the water flows uselessly to the sea, and the money is not expended for the relief of the people.
>
> It is a very simple proposition. I know what the company proposed. They said to the TVA, "You build the dam and we will buy the power or we will build it and sell you the power," but they could not get along even on that basis.
>
> Mr. President, I am saying to the Senate, I am saying to the country that if we want a national policy that will encourage the investment of private capital, as the President says we want to have—and I read his language. He says:
>
> "Obviously an immediate task is to try



The Oregonian

SILVER LINING THROUGH THE DARK CLOUD SHINING?

to increase the use of private capital to create employment—"

If we want to perform the obvious task which the President points out, do not leave it to government bureaus but tell them either to do it themselves or let private capital do it, and when private capital does it let the government tell private capital that private rights are sacred under the Constitution and laws of the United States.

FINALLY, the North Carolina Senator attacked the taxation policy of the U. S. Treasury for discouraging private investment. The undistributed-profits tax, now under such widespread fire, was the special target of the following passage:

I think the primary task upon the Congress right now, in the light of the President's message, is to repeal the undistributed-profits tax provision which we enacted in 1936. That undistributed-profits tax is destructive of the credit of every corporation in America. If I lend a corporation $100,000 it has to pay 27 per cent taxes before it pays me back, but it has to pay only 15 per cent

taxes if it does not pay me back. I am sorry the senior Senator from Mississippi (Mr. Harrison) has stepped out of the Chamber. He said today in one of the newspapers—this is the language of the chairman of our Finance Committee:

"Today if a corporation owes money it has to pay a penalty tax; if it wants to expend money it has to pay a penalty tax. I am opposed to penalizing a corporation that wants to pay its debts or expand its plant operations."

That comes from the Senator who was chairman of the committee when that bill was passed. I say to the Senate there were at least eight Democratic members of the Finance Committee who knew the bill was wrong and who said so upon every occasion in the committee, and at the White House. I say, and I am looking into the face of a Senator who will bear witness to the truth of it, that over and over again in the committee we pointed out to the Treasury authorities that the tax would be very hard on every little corporation, every debtor corporation in America, and would threaten the destruction of American business. What was the answer we got? The attorney for the Treasury Department, when we said this provision would make it impossible for a corporation to pay its debts or accumulate a surplus, actually said to us, "The corporations do not need any surplus."

Dwell on that for a moment, Mr. President. Think of the attorney for the Treasury Department of the United States saying publicly and for the public record that "corporations do not need a surplus." Of course, that is notice to every investor in America that surpluses will not be accumulated to protect his investment. Senators, remember that he said that. I was utterly amazed that he should make such a statement.

Upon inquiry by the majority leader, Senator Barkley of Kentucky, Senator Bailey identified the Treasury attorney by name as Herman Oliphant, general counsel for the department. Events in Congress subsequent to the North Carolinian's speech make it fairly probable that at least the tax complained of will be repealed or drastically revised at the regular session next month.

—M. M.

EXCERPTS from *Congressional Record*. November 17, 1937.

Should Government Step in When Private Ownership Defaults?

IN his recent address before the National Association of Real Estate Boards, Secretary of Interior Ickes gave an interesting reason for the intrusion of Federal subsidy into fields of enterprise which have heretofore been regarded, in this country at least, as more properly the function of private rather than public investment. He was referring to the "permanent" slum clearance program which is being undertaken by the Federal government under the Wagner-Steagall Act, but the underlying principle might well be compared with the government's position with respect to its public sponsorship of power projects in competition with private industry.

Pointing out that Federal efforts would be confined to the supplying of adequate housing for families not being properly cared for by private enterprise, he expressed the belief that this policy, instead of adversely affecting privately owned housing, would stabilize and enhance realty values.

Mr. Ickes outlined some of the difficulties which the PWA had to overcome in its initial efforts to provide low-rent apartments and declared that the permanent housing program of the Housing Authority under Nathan Straus of New York should "go forward much more smoothly and quickly because of the pioneering work that the PWA has done."

He reassured the real estate men:

The government does not want to compete with private ownership and operation of real estate. We realize as fully as do you what individual initiative and private capital have done to build up America; but I hope that you realize no less keenly than do we that in the low-cost housing field there is no incentive for private initiative and no temptation for capital investment on the part of the individual.

There is neither incentive nor temptation because there is no prospect of a reasonable return upon whatever capital one might in-

vest. The indubitable proof that private capital is not interested in low-cost housing lies in the fact that the blight of the slum is spreading year by year in every city of the land while, except in a very few isolated cases, nothing has been done to stop it until the Federal government stepped in with its housing program under the PWA.

We need only to go back to the pages of Jacob Reis and consider the shocking barracks that made his pen eloquent to realize that the unconscionable desire to extract a maximum return from the least possible investment is responsible for the slums of New York, of Pittsburgh, of Cleveland, and of Chicago.

ANSWERING the demand of some interests that full taxes be imposed on public housing projects, Mr. Ickes pointed out that Federal property cannot be taxed, although the housing projects are permitted by law to pay a service charge in lieu of taxes for the municipal benefits they receive. He added that at least partial tax exemption was necessary to achieve low rents.

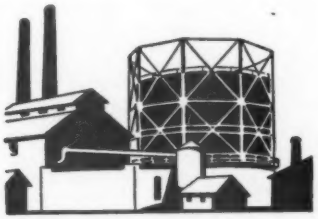
He cited the construction costs of five PWA low-rent housing projects to show that the expenditures were below the average of private construction in the same localities. He told the realty men:

> Do not forget that the government at any time will withdraw from this field, not only willingly, but gladly, whenever you are prepared to occupy it.

The private power industry would doubtless be much encouraged if the Federal government could see its way clear to make an equally restrictive declaration of policy with respect to Federal power operations. But here the evidence is to the contrary. Probably no amount of concession by private industry would induce the administration to give up, step out, or turn over its hydro-power ventures to private ownership. So it would seem the Federal government has one rule for housing and another for utility operations. Maybe this policy will be changed in 1938.

—E. S. B.

ADDRESS by Secretary of Interior Harold L. Ickes before the National Association of Real Estate Boards. Pittsburgh, Pa. October 22, 1937.



A Utility Plant Given Away

HEAT *users of Taylorville, Ill., have accepted an unusual offer of the Central Illinois Public Service Company to give them the present heating plant, which furnishes heat throughout the business district and to a few residences.*

The plant will be operated as a mutual company, and the utility will turn the plant over to them free of encumbrance. Only those who become members of the company will be furnished with heat.

The present proposition is that each property owner will pay into a fund an amount equal to half the total now being paid by him per heating season. This fund will supply the necessary working capital. The present income of the plant is estimated at $22,000.

The March of Events

Ontario Power Purchase

THE Ontario Hydro Electric Commission announced on December 11th the making of a new contract with the Beauharnois Light, Heat and Power Company, for the purchase of electric energy by the Commission. The contract runs until 1943 and assures the delivery of 260,000 horse-power. The new contract will supersede contracts between the parties which were annulled by legislative action in 1935.

From Montreal on December 13th, came reports of a conference which took place between Premier Hepburn of Ontario and Premier Buplessis of Quebec. It was understood that the Ontario Premier is seeking the cooperation of the Quebec Government in inducing Prime Minister King of the Dominion Government to permit the unrestricted export of power from the Provinces to the United States of the "surplus" power contracted for by the Ontario commission.

Swift Dam Utilization Promised

PRESENT installed power capacity of Bonneville, 86,400 kilowatts, will be marketed as quickly as the $51,000,000 project begins operating and two additional units to double this power output will be installed as soon as Congress makes the necessary appropriation, J. D. Ross, Bonneville administrator, announced at Portland recently.

The announcement was made in connection with the first meeting of the Bonneville advisory board, held in the administrator's offices. Plans for loading the Bonneville power plant to capacity as rapidly as possible were discussed by the six members of the advisory board.

The board also considered recommendations for operating Bonneville, including the construction of high tension transmission lines connecting Bonneville and Grand Coulee and similar transmission lines from Bonneville to Portland and Salem.

Prior to the advisory board session, Ross appeared before the Northwest Planning Commission, where his recommendations for the Bonneville-Grand Coulee and Bonneville-Portland-Salem transmission lines were accepted and included in the commission's report to the National Resources Committee.

Utility Act Fight Impends

ANY move to repeal the "death sentence" imposed on holding companies by the Public Utility Act of 1935 was certain to precipitate a bitter fight in the Senate, according to recent press reports.

Senator William H. King, Democrat of Utah, touched off what may be a preview of future debate when he announced that he was considering such a move and planned to prepare an amendment which would prevent the death sentence section from becoming effective January 1st.

Senator King's announcement was made in connection with administration and congressional efforts to encourage business expansion and as a direct result of suggestions made to President Roosevelt by Wendell L. Willkie, president of The Commonwealth & Southern Corporation.

Senator George W. Norris, of Nebraska, sponsor of the Tennessee Valley Authority, and Senator Robert M. La Follette, of Wisconsin, strongly assailed Mr. Willkie's proposals, while Senator Royal S. Copeland, of New York, approved them and indicated that he would be willing to introduce legislation repealing the death sentence.

TVA Curtailment Studied

REPRESENTATIVE Andrew J. May, of Prestonburg, Ky., last month said a House appropriations subcommittee had agreed to hear his arguments for curtailment of Tennessee Valley Authority expenditures. May said he would oppose further appropriations for TVA until he learned what the TVA was going to do about the $50,000,000 bond issue it is authorized to sell.

The TVA, he said, competes with private industry and is hampering operation of Kentucky coal mines. May stated:

"The utility companies used $50,000,000 worth of coal from my district in one year. They comprise a $12,000,000,000 industry paying $250,000,000 in taxes yearly. Government competition is hindering their expansion and the creation of new jobs."

Quinquennial Census

THE census of the electric light and power industry, taken as part of the quinquennial census of electrical industries, will record essential facts regarding generation, distribution, and transmission of power by all segments of the industry, according to Director William L. Austin of the Bureau of the Census, Department of Commerce. The canvass will cover operations during the calendar year of 1937. The census will be taken almost entirely

by mail, with schedules going out immediately after the first of the year.

In addition to full coverage in the private operating field, the inquiry will request information from all government-owned operations. This will include municipal, Federal, state, county, power districts, and mutual or coöperative electric light and power systems rendering electric service from their own generating facilities or purchases of energy for resale.

Information on sales of power will be broken down into two major classes. These are: (1) Sales to ultimate consumers; (2) sales for resale. Sales to residential consumers will be further broken down as follows: Residential or domestic sales; rural sales; commercial and industrial sales, including sales for street lighting and to street railways and railroads. Sales for resale will show power sold to municipal distribution systems, mutual or coöperative undertakings, and to other electric companies. Energy sales information will show by each class the number of customers on December 31, 1937, the number of kilowatt hours, and revenue from electric service.

Another important section of the questionnaire deals with source of energy. This will show the number of kilowatt hours generated by steam, by internal combustion engines, and by water power. It will also show the amount of energy purchased from outside sources.

Employment information will be divided into two classifications: Salaried employees and wage earners. Companies will be requested to report the number of salaried employees and wage earners as of June 30, 1937, and of December 31, 1937.

Leaders in the fields of private and public operations were consulted by Census officials in formulating the schedule used in this canvass.

Reports submitted to the bureau will not be available to any other government agency and cannot be used for purposes of investigation, regulation, or taxation.

FPC Issues Rate Report

THE Federal Power Commission last month issued the first of a series of 48 state reports, showing electric rates in effect January 1, 1937, for all classes of customers.

Reports issued were for the states of Oregon, Nevada, Montana, Utah, and Arizona. Reports for other states will be issued as rapidly as they are printed, it was said, and the series, when completed, will cover rates in practically all communities of 250 or more population throughout the United States. Acting Chairman Clyde L. Seavey said:

"While the rate regulatory powers of the commission are confined to wholesale rates of electric utilities engaged in interstate commerce, its general rate reports are designed to include all utilities engaged in selling electric energy to ultimate customers. These rates, like those previously published by the commission, are in the form of typical net monthly bills for specified quantities of electric energy, so that all types and forms of rate schedules are reduced to a common basis, making even the most complex rates easily understandable."

Commissioner Seavey said that while final statistics must await the completion of the series, the data already examined show that a vast number of rate changes have occurred in the 2-year period since the first national rate survey was made. He said these changes have been almost entirely reductions, largely in communities where the rate levels had previously been comparatively high. The new reports will, therefore, reflect the numerous rate reductions that have been made in practically all parts of the country.

Power Thefts

THE Mexican Light & Power Company, its facilities overtaxed by wire tapping power thieves, announced early this month that it would accept no new customers after January 1st.

Because of failure of efforts to get effective legislation to end the thefts which have equalled 25 per cent of the annual generation, the company, controlled by Belgian, Canadian, and British interests, was said to be little disposed to spend more money to increase its facilities.

The threatened curtailment became an obstacle to Mexico's industrial development and building activity. Hundreds of new apartment and office buildings, factories, and private dwellings, now in construction, would be affected. Several months ago the company halted service for electric stoves and other large electrical appliances.

Arizona

Gets Lowest Rates

CONCLUDING a new series of conferences with Tucson city officials and representatives of the Tucson Gas, Electric Light and Power Company, the state corporation commission recently announced the "altering" of a rate schedule adopted October 20th so as to give Tucson the lowest commercial and power charges in the state. The new rates were effective with December meter readings.

The revisions, benefiting the city at the expense of the company's rural consumers, will save an estimated $200,000 annually. They

were made on the premise that city consumers must bear greater governmental costs and therefore are entitled to some "equalization" with rural residents through lower rates on utilities.

Under the October 20th edict of the commission, city and rural rates were to be the same. The new set-up, however, provides the following charges per kilowatt hour:

City residential: First 20 kilowatt hours, 7 cents; next 80 kilowatt hours, 4 cents; next 200 kilowatt hours, 3 cents; over 300 kilowatt hours, 2½ cents.

Rural residential: First 20 kilowatt hours, 8 cents; next 80 kilowatt hours, 4½ cents; next 200 kilowatt hours, 3 cents; over 300 kilowatts, 2½ cents.

City commercial and power: First 30 kilowatt hours, 7 cents; next 370 kilowatt hours, 4 cents; next 400 kilowatt hours, 3 cents; over 800 kilowatt hours, 2½ cents.

Rural commercial and power: First 30 kilowatt hours, 8 cents; next 370 kilowatt hours, 5 cents; next 400 kilowatt hours, 3 cents; over 800 kilowatt hours, 2½ cents.

The commission agreed to make slight changes in its original order after renewing conferences with Mayor Henry O. Jaastad and City Attorney B. G. Thompson, and utility officials. The conferences, it was explained, "ironed out" a few differences between the two principals.

Principal provisions of the October 20th order, in which the utility valuation was reduced from $5,500,000 to $4,238,886, remained unchanged. The company's future earnings were fixed at "slightly in excess" of 6½ per cent.

California

Area Rate Adjustments

THE state railroad commission on November 24th announced that, effective January 15th next, the Pacific Telephone and Telegraph Company will make extended area rate adjustments in the San Francisco metropolitan district estimated to reduce tolls about $275,000 annually.

The schedule involves optional service where by a slight increase in the flat rates, users may have free telephone access to extended areas in which they now pay tolls.

The adjustment was said to be the seventh in Pacific Telephone and Telegraph territory since the hand-set charge adjustments October 1st, the estimated aggregate lowering of charges annually being about $1,000,000.

Illinois

Phone Rates Cut

A CUT in telephone rates which will save subscribers in the Chicago area an estimated $2,250,000 annually was ordered by the state commerce commission on November 23rd. Practically all of the reduction was for residential subscribers.

Under the commission ruling, which followed a 3-year rate investigation, the Illinois Bell Telephone Company will inaugurate on January 1st new rate schedules, eliminate the monthly charge on cradle type phones, and reduce suburban toll charges for certain subscribers in the metropolitan area. Reductions were ordered in other parts of the state also.

The commission at the same time denied the company's petition for authority to add the 3 per cent state utilities sales tax to customers' bills. The sales tax amounts to $2,265,000 a year. The commission, which has ordered reductions in telephone rates aggregating $800,000 a year in the last five years, claimed an indirect saving to the consumers by its action in forcing the company to absorb the sales tax. The company has absorbed the tax since it went into effect in 1935.

The total reduction now ordered by the commission was placed at $2,650,000 a year, of which $400,000 would be outside the Chicago district. The cut was equivalent to 3.27 per cent of the company's $81,000,000 gross revenues in 1936.

It was announced that the company would not contest the order. A. H. Mellinger, vice president, said:

"The company has decided to introduce the new rates for trial and to ask the commission for a revision later if the returns do not prove adequate. While the commission's order will cause a greater loss of revenue than seems warranted by present conditions, it introduces some entirely new rate classifications which offer definite service improvements as well as savings to customers. In the long run it is hoped these will stimulate the use of the telephone and help in some degree, at least, to offset the immediate revenue losses."

Indiana

Mayor Victor in Fight

MAYOR Clare W. H. Bangs of Huntington, twice jailed for contempt of court in his fight to establish a municipal light plant, won out in circuit court in Marion on December 3rd over his city council's vote to remove him on impeachment charges.

Judge O. D. Clawson upheld the mayor's right to continue in office, but commented: "Your conduct has not been commendable. I'm not giving you any mandate to return and do the things you have done."

Judge Clawson said he based his decision on belief that Bangs acted in good faith in his efforts to establish a municipal light plant. The principal impeachment count against Bangs was misuse of funds of the municipal plant.

Seeks to Build Dam

THE question of harnessing waters of the Salamonie river in Indiana for production of electric current came before the Federal Power Commission on November 29th. The commission granted a hearing to the Acme Engineering Service, Inc., of Ft. Wayne, which sought authority to construct three dams and two power projects.

The company hopes to build the dams on the Salamonie, a tributary of the Wabash, to provide power for sale on the open market or at wholesale to existing companies.

Oswald Ryan, general counsel for the power commission, said the Northern Indiana Power Company would oppose the application, protesting that power in excess of demand already is available at prices fixed by the state public service commission.

Gas Lease Appeal Granted

JUDGE Robert C. Baltzell, of Federal court, on November 27th granted a petition of the Chase National Bank of New York for an appeal to the United States Circuit Court of Appeals, at Chicago, from a decision of November 15th, in which Judge Baltzell rejected a suit by the bank to compel the city of Indianapolis to carry out terms of a 99-year lease of property of the old Indianapolis Gas Company.

The New York bank filed the suit as trustee for bondholders of the Indianapolis Gas Company. The suit named the Indianapolis Gas Company, the Citizens Gas Company, the city of Indianapolis, and city utilities trustees and directors as defendants.

Judge Baltzell held that the parties to the complaint were not properly aligned, that the Indianapolis Gas Company should have been joined as a plaintiff since its interests were in accord with interests of the Chase National Bank.

In filing its petition for appeal, the New York bank also filed an assignment of fourteen alleged errors in Judge Baltzell's previous decision. Filing of the appeal marks a further step in extended litigation developed since the city took over the gas plant. A similar suit filed by a group of bondholders now is pending.

Iowa

Inductive Interference

THE state railroad commission, in an order relating to inductive interference, last month amended an order dated August 18, 1936, in Docket E-2264. By the present order supply companies are required to bear the cost of furnishing one wire per circuit, with brackets and insulators, required for installation of the second wire, for the portion of the communication line involved in a parallel, and also the cost of furnishing repeating coils, housing, protection, and ground to isolate any section of a telephone line not involved in a parallel.

Additional rules were prescribed relating to protection of lines outside any parallel.

Kentucky

Stops Power Plant

THE board of city commissioners of Middlesboro was forbidden to sell or offer for sale any revenue bonds for the purpose of securing funds to construct or acquire a municipal electric distribution system or substation, by an agreed order of the Kentucky Court of Appeals, filed with the Bell Circuit Court in Pineville on November 29th. The order was signed by Judge Alex Ratliff, chief justice of the appellate court.

The verdict, it was said, was recognized as a victory for the Kentucky Utilities Company, now serving the city of Middlesboro with light and power, since it nullified the city's contract with the Tennessee Valley Authority, consummated July 29th of this year, by which the city

was to acquire current from the TVA for resale in the city.

Commission Jurisdiction Questioned

REPRESENTATIVES of the Community Public Service Company and the city of Williamstown met with the state public service commission at an informal hearing last month to determine if the commission has jurisdiction to issue a certificate of convenience and necessity to a city seeking to build a municipal power plant.

J. A. Krug, chief consultant for the commission, said the question was of great importance to Kentucky municipalities that are planning to build their own power plants. Unless the Public Service Company and the city can agree on the question of jurisdiction, he said, a court fight will be necessary to determine the commission's power.

Massachusetts

Gas Cut Delayed

A MOVEMENT to lower gas rates in Hyde Park and allow the people of that district to purchase gas at the same price paid by residents in other sections of Boston, cannot be completed this year, and new legislation will be required to put the plan into operation, it was disclosed recently.

Although Mayor Mansfield and the city council both have approved a legislative act authorizing the city to take over the Hyde Park properties of the Dedham and Hyde Park Gas Company, and then lease them to the Boston Consolidated Gas Company, the mayor stated that these details could not all be ironed out and the transactions completed before the end of this year.

Michigan

Companies Get Uniform Code

AN order of the state public utilities commission, effective January 1st, requires telephone companies in Michigan to accept a uniform code of operating rules to prevent discriminatory practices.

Commission members said few of the 200 telephone companies operating in the state have adopted any formal operating rules, resulting in discrimination against some patrons. The new order requires uniform rules that cover such things as application of business and residence telephone rates, directory listings, mileage charges, suspension of services, and special equipment charges.

The explanation said many telephone companies, most of them small, lack any definite statement of service rules, resulting in varying grades of service.

Phone Rate Investigation

INVESTIGATION of the "general telephone rate situation," including a study to determine why there is a lower charge for interstate calls than for calls within Michigan, was announced on November 30th.

Howell Van Auken, vice chairman of the state public utilities commission, said engineers had been assigned to study Michigan Bell Telephone Company rates, both interstate and intrastate, to find if alterations should be made. Van Auken said:

"I don't know how long the work will take, but we are going to make a careful and thorough study of reported discrepancies. We have been studying the general telephone rate situation for some time and steps already have been taken on the extension of so-called base areas near larger municipalities.

"The Michigan Bell has shown a disposition to meet with the commission on the various factors and we anticipate beneficial results. When the commission finally reaches its decision, undoubtedly all factors will be taken into consideration."

Intrastate Michigan Bell rates have changed several times in recent years, but interstate rates also have been lowered. Van Auken said the inquiry, in part, will determine whether inequalities arose as a result of the two types of changes.

Checks Affiliates

THE state public utilities commission on December 4th issued an order forbidding affiliates of holding companies to charge one another more than actual cost for service. The statement announcing the order said that some utility companies have organized engineering and construction companies to build new units, "loading up the costs" of building projects in the operating expense accounts.

The order applies to "services, sales, or construction contracts" between subordinate units of holding companies under state com-

mission jurisdiction. The same order also requires gas utilities to adopt the uniform accounting method promulgated recently by the National Association of Railroad and Utilities Commissioners.

New Well Ends Fears

A NEW source of natural gas was available early this month to the Gas Corporation of Michigan when its affiliate company, Utilities Pipe Line, struck a 1,300,000-foot flow at 1,444 feet, a half mile from the field terminal of its newly completed 14-mile pipe line. Officials of the company said it would be "tied in" at once to the Mt. Pleasant-Clare system and would preclude the need of borrowing 800,000 cubic feet daily from the Consumers Power Company which distributes natural gas in that territory.

Missouri

Commission Chairman Named

J. D. JAMES of Joplin, private secretary of Governor Lloyd C. Stark, was named by the executive on December 3rd to become chairman of the state public service commission, effective January 1st. He will succeed Sam O. Hargus of Kansas City, who has been chairman of the commission since September, 1935, when he succeeded J. C. Collet.

James, a member of the State Bar Advisory Committee, was named for a term expiring April 15, 1939. As commission chairman he will receive $5,500 a year.

Nebraska

For Buying One at a Time

NEBRASKA'S private power companies should be acquired one at a time by the state's three major hydroelectric districts, J. D. Ross, Seattle public power expert, said in his first interim report presented to Tri-County, Sutherland, and Columbus project officials.

Ross, engaged by the districts to appraise the state's private power interests which the districts propose to purchase, recommended the immediate purchase of the Western Public Service Company for $6,681,000. Adding other expenses, such as bond discount, fiscal agents fee, the cost of interconnecting the company's lines to the hydroelectric system, and cash for operating and extensions, would bring the amount of bonds to be issued by the purchasing district to $7,565,000, he said.

The report stated that the acquisition of the remaining companies should follow in rapid succession, "so that the benefits of integration can be set up at the earliest moment."

He urged the districts to continue to pay the same state, county, and city taxes the private companies have paid, to follow a cautious policy of rate reductions, and, as far as possible, to retain the same operating personnel.

Directors of the Platte valley public power and irrigation district recently assured representatives of cities and towns in the area that they would not stand in the way of any municipality desiring to purchase its own power plant. The assurance was contained in an agreement between the directors and representatives of a number of cities, under which the district will break down the unit valuation of the western division of the Western Public Service Company in order to assist interested cities in purchasing individual property units.

Objects to Federal Control

STATE Attorney General Richard C. Hunter recently stated that he had appealed to the state of Kansas for a united effort in resisting "the assumption of authority by the Federal Power Commission over interior waters of the rivers of Nebraska," but denied Topeka (Kan.) reports that he also expressed opposition to the Federal power program to construct dams in Nebraska streams for the generation of electricity.

Hunter said he had conferred with Clarence V. Beck, Kansas attorney general, about opposing Federal efforts to license power and irrigation districts operating within a state. He branded as "incorrect," however, a statement by Beck to the newspapers in which Beck quoted Hunter as saying he opposed the Federal power program because Nebraska has no need of additional power projects but does need water for agricultural purposes Hunter said:

"I am not opposed to any of the power projects. In fact I am in favor of them. However, inasmuch as the policy of the state of Nebraska as declared in the Constitution and statutes is to give preference to irrigation over power interests, I am compelled to comply with that policy and will do everything in my power to see that Nebraska retains control over the waters of the state, particularly the Platte and North Platte rivers."

Hunter said he had talked to the Colorado attorney general about opposing the Federal license requirement. All three states will be represented at a hearing before the FPC scheduled for February 7th at North Platte.

New York

Municipal Rates Probed

THE state public service commission has instituted an investigation of the rates charged for electricity by the municipal electric plant of the village of Macedon, Wayne county. A hearing in the commission's investigation will be held in Rochester on January 13, 1938.

Sometime ago the commission advised many municipal plants in New York state to reduce their rates as it was believed that they were excessive. It was stated that no rate proceedings would be instituted if prompt replies were made and the suggestion complied with. Since then many municipal plants have reduced their rates. The commission has since instituted rate proceedings regarding the rates of the plants at Groton, Tupper Lake, Hamilton, and Endicott and some of these proceedings were reported recently to be still pending.

Income Tax Challenged

THE New York Telephone Company on November 25th filed suit in the state supreme court attacking the constitutionality of the state legislature's enabling acts and New York city's local laws of 1933 and 1934 taxing corporate incomes for relief funds, and at the same time asked the court for a review of an additional assessment paid under protest by the company of $379,444.77 for the same period.

The company alleged that the authority granted by the legislature to tax corporations at the rate of 1½ per cent of their monthly gross incomes was unconstitutionally delegated; that it confers unrestricted tax power on the city besides delegating further powers for local legislation, and that, although purporting to be general state laws, the legislation does not apply in its terms to all cities in the state. It further alleged that the assessment of an additional tax upon revenues derived from business originating without the state is a violation of the local laws themselves, besides being illegal under the Federal Constitution and the interstate commerce rules.

In its petition to the court, the company asked for any one of three forms of relief: that the entire question be transferred to the appellate division for review; that the supreme court review the matter itself under a writ of certiorari provided for in the local laws, or that the assessment be annulled.

Ohio

Hikes Rate Fight Fund

ACTING upon the request of City Attorney John L. Davies, the Columbus city council last month appropriated $30,000 for use in carrying on gas rate litigation in defense of the 48-cent gas rate ordinance. Appropriations this year now total $105,000 for gas rate litigation.

Davies said the case was progressing much faster than anticipated. A double force of engineers is now necessary to carry on the city's technical defense before the state utilities commission, which was engaged in hearing the Ohio Fuel Gas Company's appeal from the ordinance.

Council also approved the employment of Paul Burger, who was used by the city in rate litigation several years ago, as a consulting engineer to assist the legal department.

Oklahoma

Line Fund Allotted

AN allotment of $150,000 to the Southwest Rural Electric Coöperative of Tipton was approved last month by the Federal REA.

The fund, it was said, was approximately half what had been requested, but would supply transmission lines totaling 150 miles serving about 500 farm homes. The coöperative will extend over the counties of Tillman, Jackson, and Kiowa. Power generated by the municipal plant at Altus will be used.

Pennsylvania

Referendum Fund Granted

AT the request of Allegheny County Commission Chairman John J. Kane, the Pittsburgh elections department recently included an $80,000 appropriation item in its 1938 budget to pay for a special referendum on the question of establishing an unrestricted,

permanent county utility administration.

The referendum, if held, would be a duplicate of the vote under the Kane Act at the November 3rd general election at which voters turned down the utility plan by a margin of nearly 42,000 votes.

Commissioner Kane, admitting he had requested that the $80,000 special election expense item be set up in the tentative budget, said he had no definite plans for a special election. He pointed out there was nothing in his law to prevent holding another referendum. The law, in fact, would permit a vote every sixty days.

South Carolina

New Rate Cuts

REDUCTIONS announced early this month by two more of the major power companies operating in the state, have brought South Carolina's rural electric rates to a position among "the lowest in the country," it was reported by the state public service commission.

The commission's announcement embraced the new rural rates of the South Carolina Electric and Gas Company, of Columbia, and the South Carolina Power Company, of Charleston. Previously, the Duke Power Company and the Carolina Power and Light Company had made cuts in their charges.

The new rates are those the utilities charge the state rural electrification authority. This authority, administering the REA program in the state, will soon have approximately 1,000 miles of distribution lines in operation.

Some time ago the commission began negotiations with the four major utilities with a view to lower rates for the REA. Recently a conference was held at Columbia among the state commissioners and representatives of the utilities, resulting in the utilities submitting proposed reductions in their rates.

The readjustments in rates announced on December 2nd were said to have completed the program instigated by the commission for a cheaper price.

The South Carolina Electric and Gas Company's rural rate, under the new schedule will be 1.40 cents per kilowatt hour to the REA. In the case of the South Carolina Power Company, the new rate will be 1.45 cents per kilowatt hour. The old rural rate of this company was 38 per cent higher than this.

Tennessee

Utility Defers Valuation Change

THE Tennessee Electric Power Company recently described as "premature" a suggestion from state public utilities Commissioner Leon Jourolmon that the utility cut its rates and rate base in order to conform to President Roosevelt's ideas.

Jourolmon said in his open letter to the utility that Wendell Willkie, president of The Commonwealth & Southern Corporation that controls Tennessee Electric Power, had conferred with the president on the Federal attitude toward utilities. Willkie, Jourolmon said, had "declared his adherence to prudent investment theories and a willingness to deflate write-ups in utility plant accounts."

Jourolmon proposed that the company cut its rates $1,000,000 to $2,000,000 a year and reduce its book valuations by one-third or more.

President Jo Conn Guild of the power company replied:

"Perhaps the best way that you and I can help the President and Mr. Willkie in working out the problem is to refrain from creating embarrassment by issuing public statements during the course of the conversations."

Texas

Phone Franchise Adopted

BY a 3 to 1 vote, the Waco city commission last month finally passed an ordinance granting a 25-year franchise to the Southwestern Bell Telephone Company. Because there are on file two sets of petitions, each with more than the required number of signatures of qualified voters, asking that the franchise be submitted to a vote of the people, in the general election, in April, the franchise cannot become effective before the election is held and the result officially declared. The franchise granted carried a 2 per cent gross receipts tax.

Action on an ordinance prepared at the request of Commissioner G. E. Armstrong, levying annual rentals of $2 per pole and 25 cents per wire per mile on underground wires on all telephone, telegraph, and electric light companies, was deferred until the next meeting of the commission.

Pays Profit As Dividend

THE Securities and Exchange Commission recently issued orders as a result of which the West Texas Gas Company, a subsidiary of the Southwestern Development Company, will be permitted to distribute as dividends to the parent company, owner of all of its common stock and bonds, profits for the present year estimated at approximately $315,000. In applications seeking permission to take necessary steps, the company stated that unless favorable action was taken by the SEC, it would be forced to pay approximately $63,000 in surtaxes under the undistributed profits sections of the Revenue Act of 1936.

So that it might be in a position to distribute the money as dividends and at the same time conserve its cash, the applicant asked that it be permitted to waive sinking fund payments of $150,000 and $200,000 due on January 1, 1938, and July 1, 1938, respectively, on $3,550,000 of South Plains Pipe Line bonds which it has assumed. These bonds are owned by the Southwestern Development Company which has pledged them with the Guaranty Trust Company of New York as collateral for a loan made in an agreement dated September 23, 1937, and the trust company has consented to the waiver.

In its opinion the commission said it was satisfied from the facts in the case that it should approve the application.

REA Halts Project

CONTINUING its drive for low electric rates both wholesale and retail, the Federal Rural Electrification Administration last month announced temporary halting of its $330,000 loan project in McCulloch county pending reconsideration by the Brady city council of its action doubling the rate charged for supplying current from its city plant. REA officials said the rate agreed on a year ago was one cent a kilowatt hour but that recently the city council rescinded that ordinance and withdrew the contract and now is asking 2 cents.

REA said that unless a solution could be found in short order, it would become necessary either to increase the minimum bill to about $5 a month or to postpone the construction of the lines. The project called for 400 miles of line to serve 900 prospective customers in the county.

West Virginia

Combine Seeks License

WITHOUT conceding that a coöperative power organization is a public utility, the Harrison County Rural Electrification Association on November 30th filed with the state public service commission an application for a certificate of convenience.

The action of the coöperative, organized to serve about 900 rural residents in Harrison county, marked another phase of a controversy on whether such organizations should be classed as utilities. The state commission has held that they are utilities and must apply for certificates.

The Federal Rural Electrification Administration, taking the position the coöperatives serve members only and are nonprofit concerns, claimed they should not be treated as public utilities. Conferences of commission and REA representatives have been held but neither organization has receded from its position.

The Harrison county group in submitting its application told the commission that in so doing it did not waive any rights "to assert its claim that it is not a public utility." The petition asked that the commission find the coöperative not liable for a certificate but if it did so find, to grant the certificate.

The REA has approved a $326,000 loan for 196 miles of power line and a generating plant.

Wisconsin

To Coöperate in Business Aid

THE executive committee of the Wisconsin Utilities Association recently pledged coöperation in any business revival program President Roosevelt may outline to benefit all the people and the users of electric and gas service.

The committee in session at Milwaukee revealed that plans had been completed for a construction program which would permit doubling the output of interrelated state utility systems within the next ten years if utilities are not shackled by unfair political competition. C. E. Kohlhepp, president, said:

"So far as Wisconsin is concerned, present discussions emanating from Washington looking toward the substitution of prudent investment for reproduction cost, as a valuation base for rate-making purposes, is of no great consequence to users of electric service in Wisconsin. Not a single electric rate in Wisconsin is based on the reproduction cost valuation basis."

The Latest Utility Rulings

Discrimination in Acquiring Private Plants

In a report by the assistant counsel of the New York commission, approved by the commission, practices in connection with the purchase and acquisition of private electric and steam plants were held to be discriminatory. The company had defended concessions to private plant owners on the ground that they were commercial allowances and part of the bargain for elimination of private plants and acquisition of new business.

Extending benefits not available to others to private plant owners under the guise of an acquisition agreement was termed by the commission counsel an evasion of the provisions of the Public Service Law dealing with undue preference, unjust discrimination, rebates, advantages, and special privileges. The violations found to exist were summarized in the following words:

1. By the payment of an amount substantially in excess of any reasonable value of the private plant acquired, a rebate has in effect been granted. That the excess consideration is called a commercial allowance does not alter the situation, for the recipient has been induced by the payment of a sum of money to become a customer at the filed rate for service.

2. By assuming the expense of changing over the wires and facilities of a private plant owner, the Edison Company has granted undue preference in favor of such owners. Prospective customers with no private plant for sale could not obtain such valuable assistance.

3. By extending DC service to private plant owners even for temporary periods, the Edison Company has granted an unlawful inducement and concession available under its tariff and rules and regulations only to contractors and subcontractors.

4. By leasing four Heine boilers to Hearn's for $1 per year as a courtesy, the Edison Company has disregarded the real value of the boilers which was recognized by the parties when the same boilers and the space they occupied were leased on January 10, 1936, by Hearn's to the New York Steam Corporation for $16,500 annually. (No satisfactory reason was given for the execution by the same parties of a second lease of the identical boilers on March 24, 1936. This circumstance may be of more importance in an investigation of the Steam Corporation's practices.) The maneuvers in connection with the Heine boilers render the whole transaction a farce, by which Hearn's was allowed to profit at the expense of the Edison Company and the Steam Corporation. Through the manipulation of title to the boilers a method and device for rebate was created that is forbidden by law.

5. An agreement to defend the Hotel Chelsea from suits which might be brought against it, because it terminated private plant service, shows the extremes to which the officials of the company were willing to go to consummate private plant acquisitions.

Officials of the company testified that private plants would in the future be acquired in accordance with the policy and practices referred to by the public service commission counsel in the opinion. *Re New York Edison Co. (Case No. 8801).*

Hand-set Telephone Differential to Prevent Wholesale and Wasteful Replacement

The South Dakota Board of Railroad Commissioners found that under existing conditions some additional charge should be made for hand-set telephones. This was said to be required to insure orderly progress in changing from other types of instruments to the hand sets and to prevent a wholesale and waste-

ful replacement of other types of instruments by hand sets.

The commission was also of the opinion that a change-of-instrument charge should be made in cases where hand sets are substituted for desk or wall sets. The monthly charge was reduced from 15 cents to 10 cents a month upon agreement, and it was provided that the charge should continue for eighteen months rather than thirty-six months as at present. *Re Dakota Central Telephone Co. (Order No. 6120), Re Northwestern Bell Telephone Co. (Order No. 6112).*

Orderly Plan Required for Electric Utility Extensions

AUTHORITY was granted by the New Hampshire commission for the extension of electric lines into a limited area in a town in which another utility already having franchise rights to operate offered no objection to the service as proposed. The commission held that the extension was for the public good. Criticism was made, however, of the uncertain and unsatisfactory conditions created when limited area franchises were sought by and granted to utilities seeking to enter towns in which no other like utility had previously been authorized to operate and of haphazard extensions by various utilities. The commission said:

> . . . it is not unlikely that the legislature also intended, by its provision for the control of franchises by this commission, that territorial allotments be so made among the utilities operating in the state as to provide the most efficient and economical service possible for all who are reasonably fit and able to demand it. This, in turn, would require a rationalized scheme or plan of territorial division of the entire area of the state among the various operating utilities. Such, however, has not been the result.
>
> The case now before us is illustrative of the situation existing in many towns where one utility has undertaken originally to serve the entire area but gradually has relinquished its rights in favor of another company more favorably located to serve a particular group of prospective customers. Not infrequently, as here, the result has been the projection of the second utility into several unconnected portions of a town without application for authority, or a specific commitment, to serve contiguous or intervening sections which might be served much more economically by it than by the utility originally permitted to operate throughout the entire town. Oftentimes the newcomer has asked only for rights to operate along a specified highway, extending a long finger into the territory supposedly embraced within the franchise limits of another utility, without explicitly assuming or acknowledging its obligation in respect to adjacent areas. . . . there seems to be no reason why we should continue to authorize disjointed applications for limited area franchises without regard to a comprehensive plan designed to secure to the public throughout the state the advantages of service from the most economical source. Therefore, while there appear to be no reasons for withholding the permission sought in the instant case, in the future we shall expect that all such applications will be presented only after careful consideration of the service requirements of the entire community by all the utilities of like nature operating in the town in question, and that in proceedings of this character the parties will be prepared to offer their proposals as to geographical boundaries along the lines suggested above.

Re Public Service Co. of New Hampshire (D-E1842, Order No. 3313).

Rural Electric Extension Not Restricted Because of Cooperatives

AN electric utility company which proposes to extend its lines in accordance with its service extension rules to new customers in the territory where it is furnishing service should not, in the opinion of the Missouri commission, be

prevented from making such extensions because a proposal is pending for a coöperative electric project financed by Federal funds. The commission granted such a company authority to make extensions in certain counties without incurring the expense and delay incident to separate applications to the commission for each individual extension.

In regard to an objection by the Rural Electrification Administration, the commission said that it did not understand that granting of the authority would interfere with the efforts of the Rural Electrification Administration any more than would the policies the commission had been following with separate applicants. The company would be able to extend the lines only as far as its extension rule would permit. The commission continued:

> Then that large area beyond that limit will still be available for development by the coöperative company that we understand is in contemplation, and who we understand will borrow funds from the Rural Electrification Administration for such development. It appears to us beneficial to the public to allow the utility to use its funds to make the adjacent extensions where economic conditions will permit, thereby conserving the funds to be borrowed from the Rural Electrification Administration to extend the coöperative lines to cover greater areas wherein the applicant's service will not be available than would be possible if the applicant did not take care of those areas adjacent to its lines. By such viewpoint, it appears there is no competition between the applicant and the coöperative association. The coöperative association, we understand, undertakes to furnish service in an expanded area wherein many of the lines may not be economically feasible at all but, taken as a whole, may be supported by other unserved areas that will help to finance the entire undertaking.

Re Ozark Utilities Co. (Case No. 9422).

Uniform Boat Rates Established to Meet Cost of Wage Increase

THE Washington Department of Public Service, in order to establish rates adequate to meet increased expense resulting from adjustments in hours and wages and working conditions of employees following a strike, fixed uniform intrastate rates for five steamboat companies operating on the waters of Puget Sound. The commission decided as a rule that it should not consider each route independently, that for certain purposes it should consider the operations of affiliated corporations as a whole, and that for some purposes it should consider all of the operations on Puget Sound as one complete transportation system devoted to the public service. It was observed that there were certain limitations that were as important as the general rule.

The companies were required to establish round-trip and commutation and book rates. Round-trip and commutation tickets were made interchangeable between the carriers. Carriers were required to make joint settlements with each other at least once each month.

The commission dealt with questions of property to be included or excluded, measures of value for rate making, accrued and annual depreciation, and charges to operation. *Department of Public Service of Washington v. Puget Sound Navigation Co. et al. (Cause Nos. 6970, 7036, 7040).*

Effect of Consolidation on Corporate Life

THE Pennsylvania commission approved the sale, assignment, and transfer of all the property, rights, privileges, and franchises of three electric utility companies having a corporate life of fifty years to the South Penn Power Company, which has a perpetual corporate life. The fear had been expressed

that such a consolidation might have the effect of reducing the corporate life of the South Penn Power Company to fifty years, but the commission expressed its opinion as follows:

> We are confidently of opinion that the consolidation of 50-year corporations with a perpetual corporation would not reduce the corporate life of the perpetual corporation to fifty years where, as here, the consolidation would be effected by the 50-year corporations selling all their properties, rights, and franchises to the perpetual corporation, with no change in the corporate identity of the vendee or perpetual corporation. The vendee or perpetual corporation, as we see it, would continue to possess perpetual charter rights in those territories in which it now possesses such rights, but would possess only 50-year charter rights in the territories formerly of the vendor or 50-year corporations.

Re Ayr Township Electric Co. et al. (Application Docket Nos. 37417–37419).

Expense of Metallicizing Telephone Lines to Minimize Inductive Interference

THE material necessary to metallicize telephone lines in order to minimize inductive interference with electric transmission lines should, according to a ruling of the North Dakota commission, be furnished by and at the expense of the transmission line, which is the cause of the interference. The expense of installing such material, however, should be borne by the telephone line, the metallicizing of which is made necessary by the subsequent construction of an interfering transmission line along the same route.

The commission expressed the opinion that the best method known to science to minimize such interference is to metallicize the paralleling telephone lines for the full distance of the parallel and for a further distance of 500 feet beyond each end of the parallel, and installing a repeating coil properly protected and grounded at each end of the parallel. *Re Baker Electric Coöperative, Inc. (Case No. 3640).*

Jurisdiction over Street Railways Extends to Substituted Motor Busses

THE Washington Supreme Court ordered the department of public service to assume jurisdiction over fares on motor busses substituted for street cars by a railway company. The department had dismissed an application for approval of a schedule of rates for carrying passengers on motor busses on the ground that the regulatory statute conferring jurisdiction over common carriers, expressly mentioning street railroads and street railway companies but not mentioning motor busses, did not give the department jurisdiction over motor bus rates.

The court, after stating that the operation of motor busses is a business affected with a public interest, subject to legislative control, continued with the statement:

> The motor busses, as already stated, are performing exactly the same service as the street railway previously performed. The difference lies in that of the motive power or method of propulsion, and the further fact that motor busses run on rubber tires and street cars upon steel rails. But these differences are not of controlling importance. There is nothing in the statute defining common carriers which says anything about the motive power. To what extent, if at all, motor busses were in use when the Act of 1911 was passed, about which the parties disagree, is likewise not of controlling importance.

State ex rel. Spokane United Railways v. Department of Public Service of Washington et al. (71 P. (2d) 661).

Guide Posts in Granting Operating Authority

No hard or unyielding plan or set of specifications has been devised which could be applied to furnish the correct answer in every case when authority is sought for the operation of a public utility service, but, as stated by the California commission, there are, however, certain well recognized principles and concomitants that stand out as guide posts and which help to direct the commission in its conclusions. All of these, it was said, point the way to the ultimate objective, the public interest. The commission continued:

> Among these guide posts are first, the recognition of the vital importance of rail transportation and the perpetuation thereof. Another guiding principle is our recognition that the pioneer in the field of common carrier transportation always deserves consideration, and may even deserve the protection of our regulation, so long as this pioneer supplies a service that is satisfactory and adequate to meet all phases of the public interest. Still another guide is afforded us in the acceptance of the principle that the common carrier, who is rendering a useful and a necessary public service, should be permitted to improve and strengthen that service by the adoption of a faster and more frequent service, and the inauguration of greater efficiency and economy in the performance thereof, provided, however, that in doing so no violence is done to the sound principles of regulation and the public interest is best subserved.

Re Pacific Motor Trucking Co. (Decision No. 30098, Application No. 19563).

Utility Company Must Keep Records and Accounts inside the State

A PETITION by an Indiana corporation for authority to keep its books, accounts, papers, and records in the city of Chicago, subject to the continued obligation of the company upon reasonable notice to produce them at its office in Indiana for examination by, or in behalf of, the commission, was denied by the Indiana commission. The additional cost of keeping the books, accounts, papers, and records in the state was said to be negligible when compared to the benefits to be derived by the public from such a practice.

The commission said that if occasion should arise to audit and examine such papers and records, it would be necessary for the representatives of the commission either to go to Chicago to make such audit or examination or it would be necessary for the commission to notify the company to make the records available to representatives of the commission in the state. This was considered neither desirable nor practical.

The practice of keeping such records outside the state, in the opinion of the commission, would interfere with, and hinder, the proper regulation of the company's utility business, contrary to the public interest, while the keeping of such records in the state would be conducive to the proper regulation of the utility business and would be in the public interest. *Re Kokomo Gas & Fuel Co. (No. 12888).*

Equality of Rates for Interstate and Intrastate Service

A COMPANY operating motor carrier service for transportation of property in both intrastate and interstate commerce in connection with its operation of boat and combined boat and rail service was ordered by the Connecticut commission to file tariffs specifying rates and charges on intrastate traffic no greater or less than the rates and charges applied on interstate traffic for the same or similar service.

The commission referred to an earlier

decision in which it was emphasized that rates for motor truck transportation of property cannot be governed by the same principles that are customarily applied to rate making in those public services frequently described as natural monopolies, such as electricity, gas, and rail transportation of property. One cause for the designation "natural monopolies" was said to be found in the necessity for a material investment of a permanent nature before the service could be initiated. The necessity of this permanent investment, it was said, not only serves as a protection against excessive competition but also forces the rule that rates must produce a fair return on invested capital. The motor trucking industry, it was pointed out, demands no similar investment, but rates of this industry must be based on the cost of operation of one truck together with some profit to induce continued operation. The commission said further:

> Even in those services known as "natural monopolies" where over-all return is an important element in rate making it is a recognized rule that no rate may be less than cost of operation. Rate differentials are justified in such industries by the fact that those paying higher rates are actually benefited by the contribution to the over-all return from those induced to utilize the service through a lower rate. Obviously in a rate structure erected from operating costs, any substantial differential in rates must result in one rate being too high or too low. Any rate which is less than cost cannot afford any benefit to a shipper who pays a higher rate. On the contrary such higher rate can do no more than make up losses due to the lower rate.

The company had filed with the state commission higher rates for the same transportation than the rates provided in tariffs filed with the Interstate Commerce Commission. Without deciding whether the rates in these tariffs were correctly calculated, the commission assumed that one or the other represented the carrier's estimate of a reasonable rate. Whichever did represent this, it was said, the other must be either too high or too low. It was said to be entirely impossible under the principles set up by the commission that two different rates might be established for substantially the same or similar service. *Re Thames River Line, Inc. (Docket No. 6586).*

Other Important Rulings

THE Maryland commission adopted as the uniform system of accounts for gas corporations the revised uniform system of accounts recommended by the National Association of Railroad and Utilities Commissioners by resolution adopted at its 1936 annual convention, with the revisions therein adopted by the association at its 1937 annual convention. *Re Uniform System of Accounts for Gas Corporations (Case No. 2914, Order No. 31609).*

The Missouri commission, in dismissing a complaint against electric rates, where there was nothing in the evidence to justify further investigation, after the company's rate in the state generally had been thoroughly investigated, stated that rates cannot be made by comparisons with rates supplied in other communities. *Citizens of Osage City v. Missouri Power & Light Co. (Case No. 9360).*

The New Jersey Board of Public Utility Commissioners held that the public interest required that the system of accounts previously prescribed by the board for gas utilities be revised and that there be substituted therefor a system substantially in accord with that recommended by the National Association of Railroad and Utilities Commissioners at the annual convention held in November, 1936. *Re Uniform System of Accounts for Gas Utilities.*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

PREPRINTED FROM

Public Utilities Reports

COMPRISING THE DECISIONS, ORDERS, AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

VOLUME 20 P.U.R.(N.S.) NUMBER 6

Points of Special Interest

Titles and Index

TITLES

INDEX

Re Tucson Gas, Electric Light & Power Company

[Docket No. 6754-E-538, Decision No. 9311.]

Depreciation, § 39 — Excessive reserves.

1. Depreciation reserves should not be enlarged and built up to a point beyond actual needs, p. 446.

Depreciation, § 10 — Purpose of reserves — Factors affecting amount — Needs of affiliated company.

2. An electric utility company should not accumulate a large depreciation fund because of an alleged liability for financial obligations of a transit company subsidiary to a common parent corporation, when there is no relationship between the transit company and the power company, p. 446.

Valuation, § 104 — Accrued depreciation — Depreciation and retirement reserve.

3. The distinction between "depreciation and retirement reserve" and "accrued depreciation" is a very fine distinction and more technical than real, p. 447.

Depreciation, § 10 — Purpose of reserve — Creation of surplus — Effect of Federal tax.

4. A public utility company should not be permitted to create a large depreciation reserve in order to build up a substantial surplus when, under Federal laws, undistributed surpluses cannot be accumulated without the payment of excessive taxes, since it would be unfair to ratepayers to set up a fund from their contributions which would be immediately passed on to Federal disbursement departments to be expended for such purposes and at such places, in other sections of the country perhaps, as might please the fancy and ambition of some department head, p. 447.

Depreciation, § 5 — Duties of state Commission — Destruction of states' rights.

5. The state Commission should not, by permitting depreciation reserve accumulations to build up a substantial surplus which will be heavily taxed under Federal law, be particeps criminis to the consummation of a program for centralization of government and annihilation of states' rights, p. 447.

Depreciation, § 5 — Authority of Commission — Reserve requirements.

6. Decision as to what depreciation reserve is sufficient to meet the actual needs of a public utility "with a margin and over" rests in the power which the Constitution and statutes have vested in the Commission, p. 448.

Depreciation, § 39 — Amount of reserve — Effect of ownership of reserve.

7. The fact that the depreciation reserve belongs to the company is an additional reason why regulatory authorities should place a proper limitation upon such accumulation, to the end that the syphoning of ratepayers' moneys into a fund which legally transfers title to the utility may be prevented, p. 449.

Depreciation, § 51 — Electric utility.

8. An electric utility which had accumulated an excessive depreciation reserve was permitted for the future to accumulate a reserve not in excess of 2½ per cent per annum, p. 449.

Valuation, § 296 — Working capital — Allowance based on operating expenses.

9. An allowance of working capital based upon six weeks' operating expenses plus materials and supplies makes no allowance for current liabilities and gives no consideration to the fact that in large companies there are daily meter readings and consequently somewhat constant cash receipts from that source, p. 449.

Valuation, § 332 — Going value — Separate allowance — Reproduction cost.

10. No additional allowance should be made for going value in determining a rate base by the use of reproduction new values which cover a theoretical plant, when allowances are made for interest and taxes during construction, omissions and contingencies, and other values, p. 450.

Expenses, § 118 — Uncollectible accounts — Effect of deposit requirement.

11. No allowance should be made for uncollectible accounts when a utility has the right to require a sufficient deposit for its protection from all of its customers, p. 453.

Expenses, § 109 — Taxes.

12. Every levy of taxes by law-making bodies, apparently devoting the major portion of their time toward schemes and methods by which additional levies may be made, must be included in operating expenses, and operating expenses can be liquidated only out of funds collected from the ratepayers, p. 453.

Expenses, § 80 — Merchandising and jobbing — Losses.

13. Losses incident to the merchandising and jobbing department of an electric utility company should not be included in operating expenses, p. 454.

Expenses, § 84 — Management fees — Related companies.

14. Charges by a parent company for management will be allowed only upon a convincing showing that the disbursements have a reasonable relationship to the activities and operations of a public utility company, p. 454.

Return, § 87 — Electric utility.

15. Rates were established for an electric utility calculated to earn a rate of return slightly in excess of 6½ per cent, p. 455.

Expenses, § 92 — Rate case expense — Amortization.

16. Provision was made that on submission of proof of legitimate expenditures incurred in rate proceedings the Commission would authorize amortization thereof over a period of five years, p. 455.

(Cox, Commissioner, concurs.)

[October 20, 1937.]

INVESTIGATION *of electric rates; rate reductions ordered.*

APPEARANCES: Darnell, Pattee & Robinson, by George R. Darnell, Max A. Pooler, and C. F. Elmes and James M. Lawton, for the respondent; Joe Conway, J. M. Johnson, and Allen K. Perry; Sam Headman and Ben Ferguson of Headman and Ferguson; and J. C. Darcey, for the Commission; B. G. Thompson, C. T. Knapp, R. L. Baldwin, and James A. Smith, for the city of Tucson; S. W. Seaney for the Merchants Association.

By the COMMISSION: The proceedings herein were instituted by the Commission on its own motion on May 6, 1936, for the purpose of ascertaining, determining, and prescribing just and reasonable rates for the service of gas and electricity by the respondent.

The engineering firm of Headman & Ferguson of Phœnix was employed by the Commission to inventory and value the plant. Crane & Darcey, certified public accountants of Phœnix, were similarly employed for the purpose of auditing the books and records of the company.

Pursuant to notice duly given the cause came on for hearing at the courthouse in Tucson at 10 A. M. on February 15, 1937.

Respondent is the second largest electric and gas utility coming under the jurisdiction of this Commission. It is a subsidiary of the Federal Light and Traction Company of New York. It generates, sells, and distributes electric energy in Tucson and vicinity and has lines extending in various directions to outlying districts. It furnishes electricity for all purposes, including pumping for the Cortaro Farms District 13 miles west of Tucson, and has a line extending in the direction of Nogales connecting at the county line between Pima and Santa Cruz county with the line of the Citizens Utility Company which serves the Nogales district. The Tucson Company furnishes the Nogales Company with all of its energy except during emergency periods when standby service is brought into use.

The Tucson Company purchases natural gas from the Western Gas Company of El Paso and distributes it to its customers in Tucson. For many years it manufactured its own gas and asserts the necessity for retaining for standby purposes the old plant in practically its entirety. Up to the present time there has been no occasion for resort to standby service but it is asserted that in the case of an emergency it could meet the demands in this way over a period of several days.

The company's plant has been maintained in first-class working condition and there have been few complaints concerning the quality of its service. There have, of course, been numerous complaints concerning the reasonableness of rates and charges from time to time. That doubtless is true of every utility in the country. To the extent of its ability under the meager appropriations which have been made by the legislature from time to time, the Commission has endeavored to keep in close touch with its operating results and has on several occasions issued orders reducing then existing rates. The Commission has been seriously handicapped in its efforts to protect utility ratepayers in years gone by because of the failure of the legislature to provide the funds necessary to

carry forward such work. In a number of instances, we have not been given a single dollar to prosecute rate cases and unhappily that was true of the 13th legislature held in the early part of this year. The same condition prevailed at the close of the 10th legislative session in 1931, as a result of which we made a successful plea to the 11th legislature for the passage of House Bill No. 25, which enabled us to make investigations and charge the expenses incident thereto to the utility involved. The bill expired by limitation on June 30, 1937, and notwithstanding the fact that the 13th legislature refused to make a direct appropriation for the work, it also failed to reënact House Bill No. 25. We were able to complete consideration of this case by virtue of the fact that it was commenced under the provisions of House Bill No. 25 and the major portion of the expenses incident thereto were incurred previous to June 30, 1937.

Tucson

Tucson, with a population of close to 50,000, is the second city in size in the state. It is the county seat of Pima county, and the situs of the State University. Tourists flock to Tucson by the thousands during the winter months and among these winter guests are found some of the most wealthy citizens of the nation. It is doubtful if there is another winter resort in the nation where a stronger appeal to those who wish to escape the rigors and discomforts of the winter weather which prevail in other parts of the world.

The best evidence of these facts is found in the phenominal growth which Tucson has experienced during recent years. As an illustration, which is shown by the evidence herein, during 1925, the kilowatt consumption of the respondent was 10,000,073 kilowatt hours while in 1935 it had jumped to 34,700,000 kilowatt hours. This condition is further evidenced by the expansion program which the company has already inaugurated. The respondent professed to look upon these early improvement needs with some degree of apprehension which we think is entirely unjustified. There need be no conjecture concerning the future of Tucson. Its location, its environment, its cultural atmosphere, and its many natural advantages assure permanency and stability, hence the enlargement of the company's plant will result in a greater volume of business and logically in more satisfactory net income. We have no hesitancy in expressing the opinion that the added capital which would be necessary for the expansion program would earn a reasonable rate of return.

This assumption is justified by a review of the statistical operations of the past. There has been constant enlargement of facilities during the long period of the depression but even so the net earnings have been favorable.

The following table reflects the operating results for the years 1932 to 1936, inclusive. See Table A. [Table omitted.]

Valuation Statistics

Strange as it may seem, in this proceeding involving a valuation in excess of $5,000,000, we are confronted with inventory figures furnished by one set of engineers only, namely those employed by the Commission. With a few exceptions the respondent and the

engineer for the city adopted their basic figures, differing substantially only on the question of depreciation and going value.

Our engineers estimated that it would take a period of two years to construct the plant new and based their overhead for such items as taxes and interest during construction on that estimate.

Under the weather conditions existing in southern Arizona, we are of the opinion that a period of one year would be ample time to do this work and this assumption is supported by evidence adduced relative to the construction of the Nogales line 65 miles in length. The engineer for the Commission testified that this construction could have been completed within a period of ninety days but we find that although the total value thereof was only $70,050, the engineers have written into the rate base $2,216 (depreciated) for taxes and $4,090 (depreciated) for interest during construction. This illustration alone appears to make of the 2-year estimate a rather fantastic story.

It was testified that a crew of twenty to twenty-eight men would be about the ideal size for construction crews and that such a force could construct a mile of line per day. Obviously there would be almost no limit to the number of crews that might be worked without interference with each other and the construction program could thus be expedited perhaps to a greater extent than indicated in the opinion we have just expressed that one year would be sufficient.

The argument that the acquisition and placing of machinery would necessarily consume a large part of the estimated two years is not convincing.

The following table reflects the inventory and valuation figures of the respective engineers. See Table B. [Table omitted.]

In this opinion and order we shall consider and dispose of the electric rates only. The question of gas rates will be considered in another order.

Auditor's Report

The auditor's report covering historical value and other statistical data is interesting and enlightening but it fails in one important respect, namely, it does not show the amount of cash actually invested in the property by the parent company. (This, of course, is not the fault of the auditor.) Witness Elmes, principal witness of the respondent, and for many years associated with the parent company, admitted, at page 409 of the transcript, that he had not analyzed this feature of the company's records and further admitted at page 410 of the transcript that he was not able to say what cash advances have been made by the parent company. This leads to the conclusion that the capital structure has to a very large extent been builded out of excess earnings.

Depreciation

The engineers for the Commission did not approach the question of depreciation from the standpoint of the probable or demonstrated age of the various units but by observation and inspection reached a judgment opinion of present condition. On this basis, they concluded that the property as a whole was in 90.5 per cent condition.

That this method did not dovetail with actual conditions is evidenced by

the testimony as to almost every unit of the plant. For example, the Bush-Sulzer engine as outlined by the witnesses at pages 182 and 185 of the transcript cost completely installed $257,520. It was installed in 1929 and was therefore eight years of age. The engineers found the condition to be 94 per cent. The company had charged to operating expenses 3½ per cent per annum or a total of $72,105.60. On the basis of the engineers' findings, the depreciation over a period of six years amounted to $15,451.20, disclosing an excess depreciation charge of $57,-454.40 on this one item alone.

Other items reflecting the same condition are shown in the following table: [Table omitted.]

Another extreme illustration is the case of the Allis-Chalmers engine which the engineers reported to have a condition of 45 per cent. The facts are that this engine has been in use for twenty-seven years and on the basis of 3½ per cent per annum would be 94½ per cent depreciated.

The engineers for the Commission found that the reproduction cost new of meters would be $185,994. They estimated the condition to be 94 per cent or a reproduction cost less depreciation of $174,834 to be capitalized. On this basis, they would have a current average life of less than two years. There was nothing in the record to show the actual life, but the Commission's engineer stated that it was the policy of the company to inspect them every three years, "giving a complete overhaul." The only implication that could be given to this testimony was that they had a life of several years and also that they were kept in almost perfect condition, presumably out of operating expenses, again very definitely disclosing excess depreciation reserve.

The Commission engineers' figures disclose that the plant at Cortaro was installed twelve years ago and that it was at that time a second-hand plant having been used in an irrigation project in California. At page 159 of the transcript we find that the Commission engineers reached a weighted average age of various units as follows:

1st Fulton engine	22 years
2nd Fulton engine	21 years
1st Werkspoor engine	13 years

The engineer for the city stated that he had reached the figures shown by him for depreciation on the basis of the life of the various units and the time that had elapsed since installation.

The actual depreciation reserve accumulated is in round numbers $1,-500,000 as compared with the amount allowed by the Commission engineers of $442,670, a difference of approximately $1,000,000. Asked to explain this difference, the principal witness for the company depended largely upon anticipated expenditures for the enlargement of the plant and the necessity as he viewed it of guarding against severe losses by breakdowns and other accidents.

[1] The respondent has been a successful operator and it is to be commended for the condition in which it has maintained its plant. It has enabled it to give to the people of Tucson first-class service. All of these facts, however, do not warrant the continuation of enlarging and building up depreciation reserve to a point beyond actual needs.

[2] Another argument in support of the plea of the respondent for a

large depreciation fund is the alleged liability of respondent for financial obligations of the Tucson Rapid Transit Company. It was stated that advances of from $250,000 to $300,000 will probably have to be written off as a loss.

This plea is entirely without merit. The Tucson Rapid Transit Company is a subsidiary of the Federal Light & Traction Company. So far as the record discloses, there is absolutely no relationship between the transit company and the power company. If the transit company has incurred financial obligations which it cannot pay, it should look to the parent company for assistance and not to the Tucson Gas, Electric Light & Power Company. From the standpoint of the stockholders of the parent company, it would, of course, be mighty sweet to secure these deficits through a source which would mean the extraction of the amounts from the citizens of Tucson but that would be placing an unfair burden upon the gas and electric users and we cannot and will not approve such practice.

It is true that the transit company entered the field and constructed its street car lines at a time when they were needed and that for many years they proved convenient. The original electric system has long since become obsolete; its passing was coincident with the arrival of the modern motor vehicle bus. It was merely a case of one method of transportation being superseded by another more popular and more economical system. Its demise was one of the casualties which happen in the business world with scientific progress and development. It does not necessarily follow that the original installation of the system was an evidence of poor judgment but it must follow that the investor in the original system must take his loss and not attempt to pass it on to innocent parties.

[3] Respondent raised the question of the distinction between "depreciation and retirement reserve" and "accrued depreciation" urging that the credit balance which the company has accumulated should not be classified as accrued depreciation. It seems to be a very fine distinction indeed and more technical than real. The illustration of the possibility of an expensive piece of machinery that might break down within a short time after its installation does not afford the basis for an unnecessarily large accumulation. The argument of respondent's counsel is perhaps best answered by the testimony of respondent's own witness to the effect that parts of the plant have been in use for a quarter of a century or more and are still in good condition. This is a case in which the law of averages is particularly applicable.

[4, 5] In connection with its plea for a large depreciation reserve respondent asserts that it ought to be permitted in this manner to build up a substantial surplus. It is clear that under the present Federal law, undistributed surpluses cannot be accumulated without the payment of excessive taxes, hence the plea of the respondent in this respect must be denied. It would be unfair to the ratepayers to set up a fund from their contributions which would be immediately passed on to Federal disbursement departments to be expended for such purposes and at such places in the other sections of the country, perhaps, as might please the

fancy and ambition of some department head who has never seen Arizona.

Centralization of government at Washington during recent years seems to have been and still is an obsession of Congress. The progress of annihilation of states' rights has made startling strides and if permitted to continue will completely deprive state authority of the power which it has exercised since the foundation of the government. It shall not be said that this Commission is particeps criminis to the consummation of such a program.

Respondent in its brief has discussed at great length the question of depreciation reserves collected for the purpose of showing that such collections when made become the absolute property of the utility and that it is not proper to make reductions in the rate base for the purpose of offsetting such reserves even though they might be found to be excessive. Numerous citations of court cases on this subject are included in the brief. It is significant to note that in no case was there judicial condonation of these excessive accumulations. The holdings were merely to the effect that since the accumulations had become the property of the utility or utilities they were legally held and could not be taken from the holder by the mere process of deductions from capital. In the case of Newton v. Consolidated Gas Co. 258 U. S. 165, 66 L. ed. 538, P.U.R. 1922B, 752, 42 S. Ct. 264,* the court stated: "And the law does not require the company to give up, for the benefit of future subscribers only, part of its accumulations from past operations."

The implication in this language is that past accumulations were excessive, but even so, there was no legal basis for distribution of the excess collections to present consumers.

It is found in almost all of the cases cited that emphasis was laid upon the hazards incident to storms and similar climatic upheavals as affording justification for the setting up of liberal depreciation reserves. In southern Arizona, so far as the operations of gas and electric utilities are concerned, these adverse weather conditions do not obtain to an extent that would measurably or scarcely at all affect operating expenses. It is true that there are occasional storms which do slight damage to pole and wire lines, but these instances are so infrequent that the losses resulting therefrom would scarcely be noticed in the final analysis.

[6] The courts have not attempted, as they have no power to do in this state, to set a yardstick by which depreciation reserve may be measured. There are frequent expressions to the effect that the amount must be sufficient to meet actual needs "with a margin and over." The courts have properly refrained from an expression as to what the "margin and over" should be, hence the decision rests in the power which the Constitution and statutes have vested in us.

It is urged by respondent that they should be permitted to continue to set up a reserve of 3½ per cent. Operating statistics furnish compelling evidence of the necessity of changing to a figure which will more nearly reflect actual requirements making due allowance

*EDITOR'S NOTE.—So in original. Citation for this quotation should have been Public Utility Comrs. v. New York Teleph. Co. 271 U. S. 23, 70 L. ed. 808, P.U.R.1926C, 740, 46 S. Ct. 363.

for a margin sufficient to meet extraordinary conditions which may arise.

[7] Reference was made to the celebrated Minnesota Rate Cases (1913) 230 U. S. 352, 57 L. ed. 1511, 33 S. Ct. 729, 48 L.R.A.(N.S.) 1151, Ann. Cas. 1916A, 18, wherein the court said: "The depreciation reserve belongs to the company," etc. We have no inclination to question the propriety of that holding. We may, however, consider it as an additional reason why regulatory authority should place a proper limitation upon such accumulations, to the end that the syphoning of ratepayers' moneys into a fund which legally transfers title to the utility may be prevented.

TABLE C.

SUMMARY OF DEPRECIATION FIGURES

Comparative Analysis of Depreciation Reserve: As of July 31, 1936—Electric

Electric depreciation reserve book value		$1,154,664.84
80% of $27,372.22 (transp. equip.)		21,897.78
		$1,176,562.62
Headman & Ferguson:		
Total on books		$1,176,562.62
R. C. N.	$4,760,095	
R. C. D.	4,308,525	
Observed depreciation		451,570.00
Excess book value over Headman & Ferguson		$724,992.62
Ratio of books to observed 2.6 to 1.0		
Sanderson & Porter:		
Total on books		$1,176,562.62
R. C. N.	$5,606,550	
R. C. D.	5,305,309	
Observed depreciation		301,241.00
Excess book value over Sanderson & Porter		$875,321.62
Ratio of books to observed 3.9 to 1.0		
Burns & McDonald:		
Total on books		$1,176,562.62
R. C. N.	$4,077,793	
R. C. D.	3,325,611	
Observed depreciation		752,182.00
Excess book value over Burns & McDonald		$424,380.00
Ratio of books to observed 1.6 to 1.0		
Total depreciation on books		$1,583,468
Headman & Ferguson Electric	$451,570	
Headman & Ferguson Gas	115,730	
		567,300
Excess book value over observed		$1,016,168
Ratio of book value to observed 2.8 to 1.0		
Total on books		$1,583,468
Sanderson & Porter Electric	$301,241	
Sanderson & Porter Gas	109,521	
		410,762
Excess book value over observed		$1,172,706
Ratio of book value to observed 3.9 to 1.0		
Total on books		$1,583,468
Burns & McDonald electric	$752,182	
Burns & McDonald gas	185,434	
		937,616
Excess of book value over observed		$645,852
Ratio of book value to observed 1.7 to 1.0		

[8] The accumulated reserve on electric properties along at the present time which is $1,154,665 plus a prorated amount of $21,898, making an aggregate amount of $1,176,563, is conclusive evidence of the excessive rate of depreciation which has heretofore been set up. We are of the opinion that for the future the figure should not be in excess of 2½ per cent. In the event that the actual requirements exceed the amount that would be derived on this basis, the respondent may draw upon accrued reserve to meet such a contingency.

Working Capital

[9] In so far as parentage is concerned, "working capital" seems to have been an orphan in this proceeding. Neither the respondent nor the Commission's engineers gave intelligent thought to the subject. Their testimony was to the effect that "we adopted Darcey's (auditor) figures on working capital."

Elmes for the respondent expressed the opinion that the working capital

ought to be one-eighth of the annual gross income or in round numbers $193,000. He admitted that in some instances other formulæ were used, consideration being given to current assets and current liabilities.

Mr. Darcey's figures appear to have been based upon six weeks' operating expenses plus materials, supplies, etc. This formula seems to have been adopted by accountants as a sort of a general proposition. Under that formula no allowance is made for current liabilities and no consideration given to the fact that in large companies such as this one, there are daily meter readings and consequently somewhat constant cash receipts from that source.

From the evidence before us we are of the opinion and find that working capital in the amount of $161,000 will be sufficient to meet the needs of this company in its electric department.

Taxes during Construction

Valuations for assessment purposes are made by the county assessors in Arizona as of January 1st of each year. It is well known that projects in course of construction are not assessed until the construction period is practically completed. Since this is true, it is obvious that the estimates of the engineers covering taxes during construction are almost wholly unjustified. The 2-year period for the construction of the theoretical plant should be reduced to one year. The practice of assessors in making valuations for assessment purposes at the completion of the construction period would further reduce the amount required for this purpose and we think that 25 per cent of the sum estimated by the engineers is sufficient.

The following taxes were deducted by the respondent in their 1936 annual income statement:

Electric	$220,090.89
Gas	38,785.41

Of this amount $69,271.58 is listed as Federal income and 3 per cent Excise tax. The 3 per cent Excise and a small Federal tax on telephone and telegraph amount to $26,270.33, leaving $43,001.25 of the Federal income tax which will be eliminated as a charge to be passed on in rates. The Federal income tax paid in 1936 was for 1935 operations. The total surplus by the respondent in 1935 was $207,082.64 and in 1936 it was $254,227.40. This would indicate that the Federal tax on 1936 operations would be appreciably greater than the amount actually paid in 1936 on 1935 operations. Our findings are being based on actual receipts and disbursements during the year. We are therefore assuming the lesser deduction of the tax upon 1935 operations instead of the actual assessment on 1936 operations.

Going Value

[10] Going value constitutes a major item in the estimates of respondent's engineers and the engineers for the Commission. Respondent sets up the figure in round numbers of $460,000 while the engineers for the Commission estimate that the proper amount is approximately $428,000. The engineers for the city eliminate this item entirely, and support their reason for so doing by court decisions in recent years. The engineer for the Commission who discussed this point stated that "there exists, so far as we

are aware, no acceptable formula for determining the going value properly to be allowed. A *judgment* figure based upon a composite of many considerations seems to be required."

The principal witness for the respondent, discussing this subject, said: "I mean by that the physical framework of the property, including all the buildings, generating equipment, pole lines, wires, meters, all the rest of the property which it now has except that property that has no business attached to it, or earning anything, and bringing in no revenue, has no personnel ready to operate it, and keep it functioning, and serving the public, otherwise exactly like the present property, and this figure of going concern value I have represents the difference then between those bare bones and this property as it stands today, which has an organization operating and is broken in, is serving the public, has got about 15,000 customers hooked on to the lines, and is in operation and receiving revenue."

We are not unmindful of the fact that over a period of a good many years going value was considered a proper item to be included in the rate base. We think, however, that the growth, development, and effectiveness of regulation have removed the necessity for inclusion of such an item in the valuation of a theoretical plant for rate-making purposes. The utilities come within the favored class which by common practice has come to be known as regulated monopoly. They have their respective fields to themselves and are free from competitive hazards. The theory of going value rests almost entirely upon the assertion that when a plant is constructed it has then reached the "bare-bones" stage, and must go to the public and make a strenuous solicitation campaign in order to secure business. In the case of the general industrial operator that is, of course, true, and in securing and establishing his business he must face strenuous competition; he must, perforce, in a large measure draw his customers from his competitors; in all likelihood, he will contest against long-established and, in many instances perhaps, financially more powerful organizations than his own. To him "going value" is not only something real and personal—it is a nightmare. But that condition does not exist with reference to the public utility. The basis for our values is to be found in the reports of the engineers, probably somewhere between the higher figures of the respondent and the lower figures of the other engineers. Whatever basis we may elect to use as reflecting in our judgment the fair value, it is conceded that within those figures will be found every element of value entering into the construction of a new plant. The old plant has been inventoried; it is not apparent that a pole was omitted, a foot of wire overlooked, a meter left out, or indeed any item of value missed. Everything necessary to set up a new plant complete in every detail has been included and the costs and expenses incident thereto have been considered. It would seem that all of this care and precaution should be sufficient to determine actual value but after all that has been done there has been added a large amount for contingencies and omissions. Our engineer was unable to give the average percentage figure which he said was to be found in his

work sheets and not on his report. He stated, however, that the percentage ranged from 1 per cent to 4 per cent.

There seems little basis for the additions thus included in the valuation except that for ages past this policy has been pursued. We seriously doubt the wisdom or propriety of its inclusion but inasmuch as we have decided that there is no basis for going value we shall not exclude the additions for omissions and contingencies.

The reproduction new values cover a theoretical plant. Following the fiction to its conclusion, we find the theoretical plant completed and ready for operation. It is a turnkey job, the contractor has finished his work, and the owner has accepted it. He finds at his door not only waiting but clamoring for service 15,000 customers. It must be borne in mind that these 15,000 customers have been connected up with the theoretical plant; the gas is in the mains, the electric energy is on the wires; the owner has nothing to do except to start the plant to functioning; the meters begin to turn and the owner is at once reaping the profits of his operations. Surely there can be no reason or justification for placing upon the consumers a further burden of approximately one-tenth of the total value of the plant upon which they would thereafter be compelled to continually pay a rate of return to the owner.

Interest and taxes during construction constitute another item of value and this, in a measure at least, compensates for going value.

The chief witness for the respondent at page 391 of the transcript stated that "going value begins to accumulate as the construction burden ends and the burden of development begins." That seems to fit in beautifully with our idea that if the consumers are on hand, ready and anxious to avail themselves of the service offered by the owner of the theoretical plant, then it is unnecessary to build the business; the going value has already been realized and is reflected in the various valuation figures.

We are of the opinion and find that in view of the other values which appear to be all inclusive there is no justification for the inclusion of going value in this instance.

Our conclusion to eliminate going value is amply buttressed by court and Commission decisions in recent years. Los Angeles Gas & E. Corp. v. California R. Commission, 289 U. S. 287, 77 L. ed. 1180, P.U.R.1933C, 229, 53 S. Ct. 637, majority opinion by Chief Justice Hughes; Dayton Power & Light Co. v. Ohio Pub. Utilities Commission (1934) 292 U. S. 290, 78 L. ed. 1267, 3 P.U.R.(N.S.) 279, 54 S. Ct. 647, majority opinion by Justice Cardozo; Columbus Gas & Fuel Co. v. Ohio Pub. Utilities Commission (1934) 292 U. S. 398, 78 L. ed. 1327, 4 P.U.R.(N.S.) 152, 54 S. Ct. 763, 91 A.L.R. 1403, majority opinion by Justice Cardozo.

In the Los Angeles Gas & Electric Corporation Case, *supra,* at p. 247 of P.U.R.1933C, the court decided: ". . . the Commission determining its rate base at $65,500,000 for 1930, on a basis of fair value, stated that (apart from deduction for accrued depreciation) this amount was 'the fair value of the property here involved as a going property with business attached, giving full effect to the current level of prices and allowing for any

intangible elements of value not fully cared for in the usual and current operating expense.'"

In the Columbus Gas & Fuel Case, *supra,* at p. 161 of 4 P.U.R.(N.S.) the court said: "Going value was excluded both by court and by Commission as an item of property to be separately appraised and separately reported. The record justifies a holding that it was reflected in the other items and particularly in the appraisal of the physical assets as part of an assembled whole. Cf. Hardin-Wyandot Lighting Co. v. Public Utilities Commission, 118 Ohio St. 592, P.U.R.1928D, 560, 162 N. E. 262. This, we think, was adequate."

There have been no later decisions of the court reversing these holdings. Almost all of the decisions of the state Commissions since January 1, 1935, have followed these holdings.

The Texas Commission in Gas Utilities Docket No. 108, Lone Star Gas Co. v. Fort Worth (1937) 20 P.U.R.(N.S.) 89, 112, discussing this point, says: "We are disallowing any separate value for going concern for the reason that we believe our method of valuation has amply taken such value into consideration. In our determination of the fair value of the property a recapitulation of which appears below, we have treated the different items of property as composing an active and successful plant doing business in Fort Worth with customers attached, and . . . we feel we have properly and adequately given due weight and consideration to going concern value in accordance with the law as announced by numerous Supreme Court decisions." Followed by many court decisions.

We concur in this expression of the Texas Commission and have here followed the same practice.

Uncollectible Accounts

[11] The following items appear in annual reports of the respondent:

Uncollectible bills	Electric
1935	$5,400
1936	7,200

We have eliminated these items on the ground that we have approved, as a matter of policy, the right of utilities to require a sufficient deposit for its protection from all of its consumers. In all fairness to the ratepayer, these losses cannot be passed on to those who do pay their bills when, in our opinion, the respondent has the means of protecting itself against such losses.

Taxes

[12] One of the largest factors in the operating expenses of this and other utilities is and for several years has been the appalling increase in taxes, local, state, and Federal. Lawmaking bodies apparently have devoted the major portion of their time and concentrated their energies toward schemes and methods by which additional levies may be made, apparently losing sight of the fact that every cent raised through taxation must come out of the pockets of their constituents.

It is particularly apropos to give consideration to this subject in connection with taxes levied against the utilitites. Every such levy must be included in operating expenses and operating expenses can be liquidated only out of funds collected from the ratepayers.

Merchandising and Jobbing

[13] The annual reports of the respondent reveal substantial losses incident to the merchandising and jobbing department. In the past it has been considered good practice to conduct the departments of this character for the purpose of building up a larger consumption of energy. This purpose is commendable in a way, but if such operations are to be conducted, there must be sound management which will insure at least an even break and protect against actual losses. We cannot approve of items in operating expenses to cover losses thus sustained.

Management Fees

[14] The respondent has charged to operating expenses anually 3 per cent of its gross revenues as a management charge which has been transmitted to the parent company in New York. For the year 1936 this fee amounted to $41,402. This practice has been in effect during the entire history of the company's operations.

Prolonged cross-examination failed to reveal the disposition of this fund except to the extent that it was stated the salary of the resident manager and vice president at Tucson came from that source. It was anticipated that the claim would be set up that numerous advantages were derived from this fund through engineering data and services furnished to the respondent. However, the examination of respondent's witnesses disclosed the fact that for every service of this character there was a specific and liberal amount paid from other funds charged direct to respondent.

In the future, charges to this account will be allowed only upon a convincing showing that the disbursements have a reasonable relationship to the activities and operations of the respondent.

Rate Base

Careful consideration of all the evidence and testimony adduced herein leads us to the conclusion and we find that the following table reflects the actual reasonable valuation of respondent's electric plant for rate-making purposes:

TABLE D

SUMMARY OF ELECTRICAL PROPERTY VALUATIONS

Acct. No.	Account	R. C. N.		R. C. D.	
	Intangible property				
	Organization		$41,415		$37,646
	Franchise		3,250		3,250
	Total intangibles		$44,665		$40,896
311–344	Tangible property	$3,725,326		$3,327,084	
	Less	18,200		16,100	
			$3,707,126		$3,310,984
	Additions 8/1/36 to 12/31/36	$34,397		$53,642	
	New turbine to complete	400,000		400,000	
			434,397		453,642
	Total property and plant		$4,141,523		$3,764,626

SUMMARY OF ELECTRICAL PROPERTY VALUATIONS—*Continued*

	Overheads				
351	Eng. & supt.	$174,003		$159,487	
352	Law exp. during const.	36,709		34,736	
354	Taxes during const.	30,691		27,455	
355	Interest during const.	56,661		50,687	
	Working capital	161,000		161,000	
	Total overheads		$459,064		$433,365
	Summary				
	Intangibles		$44,665		$40,896
311–344	Property account		4,141,523		3,764,626
	Overheads		459,064		433,365
	Total electrical property		$4,645,252		$4,238,887

Rate Schedules

On the basis of the valuations which we have found in the preceding section, we are of the opinion and find that for the future the following rates will be just and reasonable. See Table E. [Table omitted.]

The rates which we have prescribed will result in a reduction in revenue from that of 1936 of around $238,000.

The Commission has sought to and believes that it has distributed the reductions herein ordered fairly and equitably to all consumers to the end that the small consumer may share the advantages in the same relative proportion as the large consumer.

Rate of Return

[15] Using the 1936 operations as the basis of the rates which we have herein prescribed for the future the company will earn a rate slightly in excess of 6½ per cent. If the operating results for the next year shall prove substantially different because of any unexpected condition which might arise, the Commission will take appropriate action to meet such changes.

Expenses of Rate Hearings

[16] Respondent has set up an expense item of approximately $70,000 to cover the cost of the present rate case of which $53,281 have been allocated to the electric department.

All expenses of every nature incurred by the Commission in the proceedings amounted to $13,010.41. Inasmuch as the respondent accepted in almost their entirety the valuation and inventory figures of the Commission engineers, it would appear that the respondent's charge to this item is somewhat excessive.

That point must be determined on the submission of an itemized statement and verification thereof. On submission of proof of the legitimate expenditures incurred in the proceedings, the Commission will authorize amortization thereof over a period of five years, not more than one-fifth to be charged in any one year.

Cost of New Turbine

Respondent estimated the cost of the installation of the new turbine at $400,000. Verification of this estimate has not yet been filed with this Commission and approval of that amount cannot be made until this has been done. Respondent must file a statement showing actual expenses within a period of thirty days from the date of this order.

The proceedings herein will be held

open for such further consideration and action as may be necessary in view of the results of the operations for a period of six months during which period interested parties may make such representations as to them may seem desirable and proper.

It is hereby *ordered* that effective on or before November 15, 1937, the respondent shall establish and make effective the rates which we have herein found to be just and reasonable for the future.

It is *further ordered* that existing rates which have been approved by the Commission not in conflict with the above schedules shall remain in effect. Service rules and regulations provided for in tariffs, which have heretofore been approved by the Commission, will be omitted from this order. Reasonable terms and conditions applicable to each service and availability of service shall be filed by respondent.

Cox, Commissioner, concurring: I concur with Chairman Wright and Commissioner Betts in the above-numbered opinion and order with the exception of that part of page 2 which refers to the action of the Arizona legislature regarding the matter of providing funds for examination of utilities.

Inasmuch as House Bill 25 enacted by the 11th legislature of the state of Arizona at the request of the Corporation Commission was in full force and effect at the time of the valuation of the property of the Tucson Gas, Electric Light & Power Company, and it appearing that there were ample funds to defray the expenses of a full and complete examination, I do not believe that action of the legislature should be criticized in the opinion and order aforementioned.

I am therefore dissenting in that part of the opinion and order which appears critical of the Arizona legislature regarding the provision of funds for the examination of the property described.

WASHINGTON DEPARTMENT OF PUBLIC SERVICE, DIVISION OF PUBLIC UTILITIES

Department of Public Service of Washington

v.

Puget Sound Power & Light Company

[Cause No. 6905.]

Rates, § 313 — Combined billing — Individual customer or location.

1. Each individual customer or location constitutes a separate and distinct unit in computing the charge to be assessed for electric energy, and each

separate dwelling or business establishment is, therefore, a separate and distinct customer, p. 461.

Rates, § 240 — Schedules — Binding effect.

2. Rates and rules filed with the Department and approved by it have the force and effect of law, and they are binding on the utilities that file them and must be observed and obeyed, p. 461.

Discrimination, § 99 — Electric rates — Discount for increased demand.

3. A discount for increased demand, recognized as an important factor in load building, is not unsound or discriminatory when properly applied, p. 461.

Discrimination, § 62 — Combined billing — Separate establishments.

4. Combined billing for electric service to separate establishments owned or operated by one customer, enabling such customer to obtain electricity upon different and more advantageous rate schedules than are available to others similarly situated but not similarly favored, is discriminatory, p. 461.

Discrimination, § 99 — Electric rates — Sliding demands.

5. Encouragement of the use of electricity by anticipating or slightly sliding demands in what may be termed border-line cases is a sound, economic practice which reacts to the benefit of the public and can scarcely be called discriminatory, for its benefits are open to all ratepayers who earn them, p. 464.

Discrimination, § 99 — Electric rates — Sliding demands.

6. The practice of using demands which have been arbitrarily and capriciously pushed up without relation to load building, enabling a few chosen customers to receive demand discounts not based on probable use but on the utilities' fear of losing business, the demand being merely a subterfuge to attract business, constitutes rank discrimination and should not be tolerated, p. 464.

Service, § 170 — Submetering — Legality.

7. The practice of submetering through the purchase of electricity by the operator of an apartment house or business building and the delivery of electricity to the tenants through individual meters, which are owned or rented by the operator of the building, is not illegal as far as the utility is concerned if the electricity is measured at the master meter and paid for at standard published rates and is distributed to tenants by the building operator as his exclusive business enterprise and if any service in connection therewith rendered by the utility is compensated for on a reasonable basis, but the practice may present some serious problems of public policy and public welfare and its extension is not in the public interest, p. 464.

Discrimination, § 64 — Resale of service to tenants — Separate metering.

8. The practice of furnishing electric service to apartment houses and business buildings where there are no master meters and the service is rendered directly to each tenant and metered individually through utility owned meters, but one bill being rendered to the building operator to show the demand and consumption of all the meter readings combined, the operator then paying for all of the electricity shown on the bill as though it were received through a master meter, and he in turn collecting from his tenants on the basis of each individual meter reading, is wholly improper and unlawful and utilities should have no part in it; the practice constitutes unlawful discrimination, p. 464.

Discrimination, § 64 — Compensation to building operator — Collection service.

9. Compensation by an electric utility company to building operators for service to the utility when they make collections from tenants who are the ultimate consumers should be arranged for on a reasonable commission basis or some other equitable plan which will reflect the actual value of the services performed, p. 464.

Discrimination, § 17 — Rates — Equality.

10. All customers within their proper classifications should receive the same treatment, pay the same unit prices for electricity consumed, and be given equal opportunity to earn discounts, p. 466.

Discrimination, § 11 — Powers of Commission.

11. The legislature, in enacting the Public Service Law, intended that sufficient authority should be delegated to the Department of Public Service to prohibit discrimination against customers of utility companies, p. 466.

Rates, § 190 — Presumption as to reasonableness.

12. Rates, tariffs, and rules of a public utility company which have been approved by the Department as provided by law and which are not under attack in a case involving questions of discrimination must be presumed to be fair, just, and sufficient, p. 466.

Discrimination, § 29 — Deviation from rate schedule.

13. A deviation from any filed and published schedule must be held to be unjust, unfair, and discriminatory per se, p. 466.

Discrimination, § 62 — Combined billing — Nonadjacent property.

14. Discrimination results from the practice of permitting a customer receiving service to buildings upon a contiguous tract of land through a master meter to include buildings not on the tract or contiguous thereto, with a resulting rate for service to such buildings bearing no relation whatever to the rates provided in the utility's filed and published tariffs, p. 467.

Rates, § 32 — Commission jurisdiction — Utility competing with publicly owned utility.

15. The Department of Public Service has jurisdiction over the practices, rates, rules, and services of an electric utility even though the utility operates in competition with publicly owned utilities, p. 468.

Discrimination, § 1 — Elimination — Utility competing with municipal plant.

16. An electric utility company was required to eliminate discriminatory practices which had grown up because of competition with a municipally operated utility, in reliance upon the municipality's pledge to eliminate such practices in its own operations, p. 469.

Rates, § 313 — Combined billing — Definition.

Meaning of the term "combined billing," p. 461.

[October 25, 1937.]

COMPLAINT *against discrimination resulting from combination of billing, sliding demands, and assistance to large users in submetering; elimination of discriminatory practices ordered.*

By the DEPARTMENT: This matter came on regularly for hearing pursuant to notices duly and regularly given at Olympia, Washington, on April 14, 1936, and at Seattle, Washington, on May 14, 15, 18, 19, 20, 21, and 22, 1936, and again at Olympia on December 17, 1936, before Ferd J. Schaaf, director of public service; W. D. Lane, supervisor of transportation; and Frank Purse, supervisor of public utilities, during the April and May hearings and Ralph J. Benjamin, supervisor of public utilities, during the December hearing. Witnesses were sworn and examined and oral and documentary evidence was received and the following appearances were filed: Complainant, by George G. Hannan, Assistant Attorney General, F. J. Lordan, Attorney and Examiner, Department of Public Service, and C. P. Dexter, Chief Engineer; Respondent, by H. H. Cleland and Raymond W. Clifford, Attorneys, Security Building, Olympia, and S. P. MacFadden, Vice President, Seattle; Mannings, Inc., by F. B. Fite, Jr., of Bayley & Croson, Attorneys, Seattle; White and Bollard, by Wm. T. Laube, of Grinstead & Laube, Attorneys, Seattle; First Rental Service, by Alice M. O'Leary, Attorney, Seattle; Building Owners & Managers Association of Seattle, by Winlock Miller, Jr., of McMicken, Ramsey, Rupp & Schweppe, Attorneys, Seattle; Cascade Theaters Corporation, by Tanner & Garvin, Attorneys, Seattle, and Scott Z. Henderson, Attorney, Tacoma; Martin Apartments, by Mrs. Ida Lind, owner, Seattle; Lincoln Court Apartments, by C. Mattson, Seattle; Rosemont Apartments, by August Anderson, owner, Seattle; Villa Castella Apartments, by W. S. McKean, owner, Seattle; Harvard Crest, by Mrs. F. Burgess, owner, Seattle; Foster & Kleiser, by Stephen V. Carey, of Kerr, McCord & Carey, Seattle; Apartment Operators Association, by H. T. Williams, Secretary-Treasurer, Seattle; Superior Service Laundries, by Ivan Merrick, of Merrick & Kelly, Attorneys, Seattle.

Having fully heard and considered the matter and having read and considered the briefs submitted by several of the affected parties, and being now fully advised in the premises the Department makes and enters the following findings of fact, opinion, and order:

Findings of Fact and Opinion

I.

History of Complaint

Late in 1935 the Department of Public Service received informal complaints alleging that the Puget Sound Power and Light Company and the municipal light and power utility wholly owned and operated by the city of Seattle, and known generally as City Light, were discriminating in the matter of rates, discounts, and other practices between apartment houses located in Seattle. At first the Department believed the complaints resulted from errors in billings, but a preliminary investigation indicated that a widespread and totally unfair practice had grown up as a result of the vigorous competition between the two electric utilities. Consequently, informal conferences were held with officials of the respondent company and City Light, and with members of the public utilities committee of the

Seattle city council. As a result of these conferences, and after both utilities and the Seattle council had pledged coöperation with the Department, it was determined to make a thorough investigation, to hold formal public hearings and to take all available testimony relating to the reported discriminatory practices.

Meanwhile the Department inquired of all other Public Service Departments and Commissions in the country whether they had encountered the same or similar practices. Replies received from nearly all of the states have been analyzed and are a part of the report in this case. Though few cases actually comparable were reported, such practices as testimony has disclosed in the case seem not to be tolerated in any other state in the Union.

Before discussing the nature of the complaint in this case it would be well to describe the peculiar situation that exists in Seattle. There we have two large electric utilities in fierce competition for business. Both own and operate generating plants, maintain transmission and distribution systems, and sell electric energy to the public. Both maintain extensive sales organizations; both have published rates and tariffs. Both have identical rate structures. Tariffs of the Puget Sound Company are filed with the Department. Those of City Light are embodied in city ordinances. The only essential differences between the two electric utilities are: The Puget Sound Power and Light Company is privately owned and is subject to the jurisdiction of this Department, whereas City Light is owned by the city of Seattle and is subject only to the jurisdiction and control of the city council and the mayor.

The Puget Sound Company is required to comply with the Public Service Laws of the state of Washington and the rules and regulations and orders of this Department. Its books and records are always open to the Department's engineers, accountants, and examiners.

City Light, however, makes no reports to this Department and sometimes denies us access to its books and records. The Department consented to engage in this investigation only after receiving the promise of wholehearted coöperation from the Seattle city council.

The Department, therefore, moved against the respondent company, relying on the promises and the good faith of the Seattle city council to rectify the practices of the utility under city control and jurisdiction. The Department believed then and believes now that only by coöperation between the two utilities and between them and the Department can the abuses complained of be corrected.

II.

Nature of Complaint

We have heretofore mentioned discrimination and discriminatory practices of which both utilities are accused. Just what are these practices and wherein does discrimination lie?

The complaints reaching this Department charged that both utilities were permitting and encouraging the combination of billings of certain large users of electric energy; that actual demands were ignored and arbitrary sliding demands were substi-

tuted; and that large users were being assisted in submetering.

III.

Combined Billing

[1–4] What is combined billing and why is it discriminatory?

The Department's rules, the respondent's tariffs and rules on file with and approved by the Department, the tariffs and rules of City Light, and universal custom throughout the United States, require that each individual customer or location shall constitute a separate and distinct unit in computing the charge to be assessed for electric energy. Each separate dwelling or business establishment is, therefore, a separate and distinct customer.

Rates and rules, filed with this Department and approved by it, have the force and effect of law. They are binding on the utilities that file them and they must be observed and obeyed. It is interesting to note that the rules of respondent and City Light, on file and in force, provide that rate schedules are based on service furnished to one customer through one meter.

It is the long-established practice in electric utility management, as well as a part of the filed rules of respondent and City Light and of this Department, to consider each separate dwelling or business establishment as an individual customer—a unit both for service and for billing.

Under this rule each customer, each individual, each residence, or each business house purchases electric energy at specified published rates. There is a fair balance between customers. Each ratepayer or customer, according to the class of his service, pays a scheduled rate based on the amount of energy consumed. Only by this method of rate making can special, "inside," discriminatory, and unfair rate practices be avoided.

What is combined billing? It is the grouping of a number of dwellings, or locations, or business establishments in different locations for the purpose of calculating the price to be paid for electric energy. For example: "B" owns or operates a store. Under our standard and well-founded method of rate making he pays at a certain rate for the current he uses. But suppose he is in competition with "C" who owns fifteen stores. By all fair practices "C" should pay, and elsewhere throughout the country he does pay, according to his use, the same rate as "B" in each of his fifteen establishments. In Seattle, however, he might—and probably would—be paying an "inside" rate because he would be combining the demands and energy of his fifteen different stores and receiving one bill.

Let us refer to Schedule 20, Electric Tariff 2, of the Puget Sound Power and Light Company. The utility uses the demand type of rate for the service of commercial establishments—a practice that is almost universal. City Light uses the same kind of rate.

The demand of any commercial ratepayer is ascertained either by careful estimating or by a demand meter. Demand is the highest 15-minute peak of use in the month for which the bill is figured. It indicates the amount of plant or capacity the utility must have available to serve the customer at the customer's peak of demand.

Schedule 20, Tariff 2, Puget Sound Power and Light Company, provides the following rates:

If a customer has a peak demand of from 21 to 100 horsepower, he earns a discount of 12½ per cent on his month's bill for electric energy.

If he has a demand of from 101 to 250 horsepower, he earns a discount of 25 per cent.

If he has a demand of 250 horsepower or more, he earns a discount of 40 per cent.

City Light has identical published rates. It should be noted that discounts for increased demands are everywhere recognized as important factors in load building. They help to increase use of electric energy and to bring about a lower average rate. There is nothing unsound or discriminatory in that type of discount properly applied.

We have seen that the Puget Sound Power and Light Company and City Light offer a 12½ per cent discount for a peak demand of 21 to 100 horsepower.

Let us say that "B" has a peak demand of 22 horsepower in his store. He then earns and receives 12½ per cent discount on his monthly bill for electric energy. Each of the fifteen stores owned by "C" has a peak demand of 21 horsepower. He earns the same 12½ per cent discount. Thus, in fair and standard billing, under the filed and approved rules of both the Puget Sound Power and Light Company and City Light, there is no discrimination between "B" and "C."

However, in Seattle, under the present practices of both utilities, "C" would be permitted to combine his demands on his fifteen stores. His fifteen stores would be grouped and shown as only one customer, with a peak demand of 315 horsepower, though the stores might be many miles apart. Consequently, his discount would not be 12½ per cent but 40 per cent.

This is not a far-fetched example. It is a fair sample of what is actually happening in Seattle in a large number of cases. Indeed, it is an admitted fact that both respondent and City Light are practicing combined billing.

In the main, the beneficiaries of the practice of combined billings are: large groups of apartment houses, office buildings, hotels, gasoline service stations, chain stores, and the Metropolitan Building Company. For example, a Seattle realty firm, operating (but not owning) a group of large apartment houses, has been permitted to combine all demands in one for the purpose of receiving the larger discount. Naturally independent apartment house owners, unable to obtain the same rates, are placed at a decided disadvantage.

Here is another plain evil of the combined billing practice. The benefits are limited to a few of the largest users of electric energy—owners, managers, or operators of large groups of apartment houses, stores, or other business houses. The practice of combined demand billing is not extended to all who ask for it. The record shows clearly that only those agents, operators, or managers of business establishments having a sufficient volume or demand to enable them to bid one utility against the other are granted the preferred "inside" rates and contracts herein set forth. The utilities submit to and even en-

courage such tactics in order to retain business or get it away from each other. Many apartment house agents and operators of other business establishments have been eager to receive the benefits allowed to the chosen few, but they have been turned down by both utilities. If this is not discrimination, by what name shall it be called?

Exhibit 11 sets forth a typical instance of combined billing. This exhibit contains a detailed study of the electricity used in one calendar year, under combined billing, by occupants of ten large apartment houses operated by Charles F. Clise, who is designated upon the utility's records as an agent. Mr. Clise's contract is with City Light. It must be understood that the energy herein referred to is only that used by the apartment house tenants. During the year detailed in this exhibit, Charles F. Clise, as agent, was billed for $4,253.95 for electricity consumed by tenants in the ten listed apartment houses. If City Light had billed each building separately the bills would have been larger, and if it had billed each tenant at regular published rates the total bill would have been $21,891.60. But let it be known, as the record shows, that Clise, the agent, collected this sum of $21,891.60 from the tenants directly. Thus, no saving accrued to the actual user and final ratepayer by reason of the combined billing of these ten apartment houses. The profit of $17,637.65 accrued entirely to the agent, Mr. Clise. This example illustrates both combined billing and submetering as practiced in Seattle.

It must be understood that the foregoing is cited merely as an example. The record is replete with similar cases involving both respondent and City Light. The same or similar advantages, favors, discounts, or discriminations have been granted to office building owners, managers, and operators, to theater and store chains, to chain service stations, and others. These practices enabled these particular operators to obtain electricity upon different and more advantageous rate schedules than are available to others similarly situated but not similarly favored by the two utilities. This constitutes the worst type of discrimination. These practices violate the fundamental principles of public service and render the making of fair, just, and reasonable rates impossible.

It was claimed by counsel for respondent that only buildings or establishments under one ownership were accepted for combined billing. The testimony showed that the discriminatory rates and benefits were allowed by the utilities mainly to agents of mortgage companies, real estate firms, and others claiming or having ownership. It was often impossible for the Department's engineers to determine the ownership of much of the property in question. It was admitted that the simple statement of ownership by beneficiaries of these preferred contracts was sufficient to obtain the inclusion of other buildings within the terms of existing agreements. Neither utility investigated ownership of buildings preferentially served, or required any proof of common ownership. It is not denied that the special and "inside" rates and contracts were granted by the utilities to agents who had no color of title whatsoever to the property placed under preferential contracts. Therefore,

the claim of respondent that only buildings under common ownership were combined for billing falls under an avalanche of contradicting evidence.

IV.

Sliding Demands

[5, 6] What is a sliding demand? How does it work? When is it unfair and discriminatory?

It has long been the practice—and it is a sound, economic practice which reacts to the benefit of the public—to encourage the use of electricity by anticipating or slightly sliding demands in what may be termed border-line cases. Where so used, the practice can scarcely be called discriminatory for its benefits are open to all ratepayers who earn them.

Again let us take an example of standard practice:

"A" has a peak demand of 20 horsepower. Therefore, he receives no discount. But it is good business and it is in the public interest to encourage "A" to increase his demand by the use of more electricity. Therefore, the utility will "slide" "A's" demand to 21 horsepower and let him receive the 12½ per cent discount provided in its filed tariffs. The usual result is that "A" will install more appliances to use the additional electricity, or will make greater use of his existing appliances.

It may be asked how this can possibly react to the benefit of the public. The answer can be found in experience. As use of electricity increases, the load factor of the utility improves. In other words, more of its investment in production and other facilities comes into steady use and earning power. Revenues increase and the average rate may be reduced, to the benefit and profit of the public.

In Seattle, however, as the record plainly shows, demands have been arbitrarily and capriciously pushed up without relation to load building. Both utilities played havoc with demand by using it as a weapon of warfare. A chosen few customers have been permitted to receive demand discounts not based on probable use but on the utilities' fear of losing business. In fact, too often the demand is merely a subterfuge used by a salesman of one or the other of the two utilities to take business from the other. This constitutes rank discrimination and should not be tolerated. It creates a condition of suspicion and distrust. It forces both utilities to take certain business at a loss, and the public—all of the customers, and particularly the small users of both utilities—are penalized through their rates to make up these losses.

V.

Submetering

[7–9] Submetering may or may not be an evil depending upon how it is conducted. Let us consider some different kinds of submetering operations.

First type of submetering.

"A" operates an apartment house or business building. He purchases electricity from either utility. This electricity goes through a master meter and thence to the tenants through individual meters (submeters) which are owned or rented by the operator of the building. We are of the opinion that such an operation is not il-

legal as far as the utility is concerned if the electricity is measured at the master meter and paid for at standard published rates and is distributed to tenants by the building operator as his exclusive business enterprise and any service in connection therewith rendered by the utility is compensated for on a reasonable basis.

However, when we analyze the operation further we find that it presents some serious problems of public policy and public welfare. Is the building operator a public service company within the meaning of our regulatory laws? If he is not, he may resell the electricicty at any rate he pleases even though the profits therefrom may be unconscionable. The submeters may be inaccurate but no one will have authority to test them and compel correction. If the operator is a public service company, his low distribution expense probably would call for rates considerably lower than those paid by similar classes of customers of the regular utility in the same city or area. Thus tenants of similar buildings and ratepayers of the same class in a given city would pay different charges for identical service. Discontent and confusion no end would result.

The courts of other jurisdictions are divided on the question whether building owners are public utilities when they resell to tenants in accordance with the plan just discussed and our own court has never had occasion to rule squarely on the point. It is a question we need not rule upon at this time, but in the near future we will determine and make known our decision. At any rate, we do not believe the extension of the practice is in the public interest, whether it is legal or not.

Other types of submetering.

The record shows that in Seattle submetering frequently possesses new characteristics. Both respondent and City Light serve apartment houses and business buildings where there are no master meters and the service is rendered directly to each tenant and metered individually through utility-owned meters. In numerous cases the utilities do not render bills directly to their ratepayers although in some instances they even read the meters and compute the bills of the tenants. A common practice is to render one bill to the building operator showing the demand and consumption of all the meter readings combined. The operator then pays for all of the electricity shown on this bill as though it were received through a master meter, but he in turn collects from his tenants on the basis of each individual meter reading and generally at the regularly published rate of the utility for the particular class of service. Sometimes he applies rates of his own design. Sometimes he arbitrarily changes bills that are protested. The difference between the amount billed to the building operator and the amounts collected from the tenants is considerable and is pocketed by the operator. The ultimate consumer gets no benefit and the utility gets considerably less under this arrangement, but the building operator garners a very handsome profit without any investment at all.

The sort of operation which we have just described is wholly improper and unlawful, and the utilities should have no part in it. They have no right to ask their other customers to make up amounts which they allow the building operator to receive under this

submetering arrangement. Nor have they the right to load upon other ratepayers the time of employees and other expenses involved in reading meters, calculating bills and performing other services for the benefit of the building operator. The practice constitutes unlawful discrimination.

We are not overlooking the fact that the building operators may render a valuable service to the utilities when they make the collections from the ultimate consumers. However, compensation for simple collection service should be arranged for on a reasonable commission basis or some other equitable plan which will reflect the actual value of the services performed. Cost and value of this collection service as well as the standard practices of other utilities throughout the country should be considered in determining the amounts to be allowed. The Department will make a further study of this matter.

VI.

Results of Practices and General Discussion

[10–13] The record in this cause, and the exhibits introduced by the Department—and there is no denial by either utility—prove conclusively that sometimes all three of the discriminatory practices discussed above were offered to the same customer.

The practices described result in unjust and unfair rates, discrimination against tenants and against other ratepayers of both utilities, and in injustice to the utilities themselves, as well as the unjust and unfair enrichment of persons receiving the benefits.

The loss to the utilities, which must be borne by other than the favored customers, is shown by the record to be several hundred thousand dollars annually.

It is a well established and universally recognized principle of rate making and of regulation that all customers, within their proper classifications shall receive the same treatment, pay the same unit prices for electricity consumed, and be given equal opportunity to earn discounts. To make certain of this equality, the various types of service are classified and rates and rules and contract terms are established, approved by this Department or the city council, and not only placed on file as part of the permanent public record, but also published so that all customers and the public generally may know the exact conditions for receiving service of all kinds, and the prices to be paid therefor. These rates, rules, and regulations governing service, upon approval by the Department, become law in their force and effect. They are subject to enforcement.

It is plain that the legislature, in enacting the Public Service Law, intended that sufficient authority should be delegated to this Department to prohibit discrimination against customers of utility companies. Indeed, that was the first recorded reason for regulation.

Since the rates, tariffs, and rules of respondent have been approved by this Department as provided by law, and since they are not under attack in this cause, they must be presumed to be fair, just, and sufficient. Therefore, a deviation from any filed and published schedule must be held to be unjust, unfair, and discriminatory per se. Our law and the rules of this Department

plainly set forth the fair and lawful method the utilities under our jurisdiction must follow when they desire to change rates or rules. Clearly respondent failed to comply with the law or the Department's rules in this respect.

City Light, not subject to regulation by this Department but under the direct management of the city council of Seattle, is likewise shown by the record in this case to have violated the rules and ordinances of its regulatory body, and to have deviated from its established and published rates and tariffs by indulging in combined billing and other discriminatory practices complained of in this case.

VII.

Metropolitan Building Company

[14] The University of Washington owns a large tract of land in downtown Seattle, which is leased to the Metropolitan Building Company. Fourteen buildings have been erected on this land. Although streets and alleys have been cut through this tract, the land so used has never been deeded to the city. The Metropolitan Building Company maintains the streets, street lights, and generally polices the district. Respondent is permitted to carry its lines and facilities through this tract.

In 1932 the Puget Sound Power and Light Company filed with this Department a special schedule entitled "Schedule 22 of Tariff II," which provides for electric service to buildings upon a contiguous tract of land. The Metropolitan Building Company is the only consumer in Seattle operating under the terms of this schedule. Some reason may exist for this particular schedule. It is not challenged in this cause and must be assumed to be fair and just. The electrical energy is delivered to the tract at one point and measured by a master meter. The Metropolitan Building Company then conducts the electricity to its various buildings on the leased tract.

A study of respondent's "Schedule 22, Tariff II" shows beyond question or doubt that it was intended to cover only electric service to buildings upon one or adjoining tracts. Without a doubt it was filed for the express purpose of caring for the Metropolitan Building Company's particular requirements.

In the course of the investigation in this case it was discovered, and the record so shows, that respondent deviated even from the broad terms of its own "Schedule 22, Tariff II" by permitting the Metropolitan Building Company to include buildings not on the university tract or contiguous thereto within the terms of its Schedule 22 contract. The buildings so included are, in some instances, several blocks away from the university tract. They are not served through the master meter on the original tract. This practice is, of course, another result of the bitter fight which has raged in Seattle for so many years between respondent and City Light. It is a plain violation by respondent of its own filed tariffs and is discriminatory.

It is interesting to note how the charge for electric energy consumed in the five buildings off the university tract was computed and assessed. The electricity consumed in the buildings on the tract was first computed and then the average rate per kilowatt hour

was ascertained by dividing the total charge—which included the horsepower demand charge as well as the energy charge—by the number of kilowatt hours consumed. Respondent then applied this average kilowatt-hour rate to the electricity consumed in the five noncontiguous buildings to determine their total bill. This was then added to the total bill for the buildings on the tract. The resulting rate per kilowatt hour bore no relation whatever to the rates provided in respondent's filed and published tariffs. This flagrant discrimination and rate violation should be stopped.

During the year ending May 1, 1935, all of the buildings included in the Metropolitan Building Company contract consumed 7,900,018 kilowatt hours at a total charge of $72,254.76, or an average price of .9146 cents per kilowatt hour. If the electricity consumed in the five noncontiguous buildings had been calculated at the proper filed tariff rate they would have paid 1.35 cents per kilowatt hour, which is the rate charged and collected from independent building owners whose business is not large enough to make respondent and City Light compete for it.

VIII.

Respondent's Challenge to Jurisdiction of Department

[15] The Puget Sound Power and Light Company, as its defense in this proceeding, relies in the main upon its challenge to the Department's jurisdiction in this cause.

Remington's Rev. Stats. § 10422, provides, in so far as applicable herein, as follows:

"Complaint may be made by the Commission of its own motion or by any person or corporation, chamber of commerce, board of trade, or any commercial, mercantile, agricultural, or manufacturing society, or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public service corporation in violation, or claimed to be in violation, of any provision of law or of any order or rule of the Commission: *Provided,* that no complaint shall be entertained by the Commission except upon its own motion, as to the reasonableness of the schedule of the rates or charges of any gas company, electrical company, water company, or telephone company, unless the same be signed by the mayor, council, or commission of the city or town in which the company complained of is engaged in business, or not less thas twenty-five consumers or purchasers of such gas, electricity, water, or telephone service: *Provided, further, That when two or more public service corporations (meaning to exclude municipal and other public corporations) are engaged in competition in any locality or localities in the state, either may make complaint against the other or others that the rates, charges, rules, regulations, or practices of such other or others with or in respect to which the complainant is in competition, are unreasonable, unremunerative, discriminatory, illegal, unfair, or intending or tending to oppress the complainant, to stifle competition, or to create or encourage the creation of monopoly, and upon such complaint or upon complaint of the Commission upon its own motion, the Commission shall have power, after*

notice and hearing as in other cases, to, by its order, subject to appeal as in other cases, correct the abuse complained of by establishinig such uniform rates, charges, rules, regulations, or practices in lieu of those complained of, to be observed by all of such competing public service corporations in the locality or localities specified as shall be found reasonable, remunerative, nondiscriminatory, legal, and fair or tending to prevent oppression or monopoly or to encourage competition, and upon any such hearing it shall be proper for the Commission to take into consideration the rates, charges, rules, regulations, and practices of the public service corporation or corporations complained of in any other locality or localities in the state. . . ."
(Italics ours.)

The particular contention of respondent is that the legislature, by this act, intended not only to exclude municipal and other publicly owned utilities from the jurisdiction of this Department, but also to exclude from the Department's jurisdiction and control all privately owned public utility companies in competition with publicly owned utilities.

The Department cannot conceive how such an interpretation can be read into the plain provisions of the statute. It would have been simple to write the statute according to respondent's contentions if the legislature had desired to do so. But the law was not so written. Hence, we believe it was not the legislative intent to exclude from this Department's jurisdiction the practices, rates, rules, and services of respondent in territory where there is competition with a publicly owned utility.

Respondent's objection to the Department's jurisdiction is, therefore, overruled.

IX.

Practical Difficulties Facing Department

[16] It is seldom that discriminatory rates and practices cannot be corrected by simple informal proceedings. It is not often that they assume the proportions or the importance they have attained in this case. It must be admitted in all fairness to both utilities in Seattle that originally they did not set out upon a deliberate plan to give special and discriminatory favors to a chosen few of their customers to the detriment of the rest of their ratepayers. These utilities are the victims of their own intense desire for business at all costs. The spirit of competition which generally has been such a boon to business and industry in America has in this instance been carried too far—so far in fact that it may be said to resemble open warfare.

It may be asked: Which utility started the pernicious practices? Each blames the other. Each claims to have acted solely in self-defense. It is impossible to say how or when the evils started or which utility first violated its published tariffs. It is sufficient that we know the practices now exist and that they constitute unlawful discrimination.

Before proceeding to issue an order in this case, the Department must face the fact of divided jurisdiction. We can order respondent to cease and desist from discriminatory and illegal practices but we have no such authority over City Light.

If the Department were to issue an

order requiring respondent to cease and desist, and if City Light were to continue the discriminatory practices, an injustice would result. Neither of the utilities should continue the practices. Both should abandon them at the same time so that neither is placed at too great a disadvantage in the competitive struggle. We understand that the contracts of respondent provide that the customer may cancel if rates are raised during the term of the agreement while those of City Light do not. If this is the situation, respondent may suffer some disadvantage through loss of petulant customers even if both utilities abandon the practices simultaneously. However, we cannot protect respondent from all the consequences of its competitive struggle with a utility over which we have no jurisdiction. The Department believes that both utilities can and will abandon their unlawful practices at the same time because of the full coöperation we have been promised by the city officials.

Even before the complaint herein was filed the Department received from governing officials of the city of Seattle assurance that if and when the Department corrected the abuses under discussion upon the Puget Sound system, the same corrective action would be taken by the city council of the city of Seattle in so far as City Light is concerned. In accordance with that pledge, offer of coöperation, and desire to remedy what were obviously improper practices, the city council of Seattle enacted a resolution which in effect placed on record the pledge so made. A copy of this resolution was ordered transmitted to the Department and is set forth in the record in this cause. It is in the form of a communication from the city comptroller and reads as follows:

"January 8, 1936

"Department of Public Service
"Olympia, Washington
"Gentlemen:

"The City Council on December 30, 1935, adopted the report of the Finance and City Utilities Committees recommending that the Department of Public Service of the state be notified that as soon as the Department orders the Puget Sound Power and Light Company to cease the practice of granting special rates to operators of apartment houses and business establishments and the city of Seattle is notified of such action the city will also cease such practices. This is for your information.

"Very truly yours,
"GEORGE GRANT
(signed)
"Chief City Comptroller"

Naturally the Department places full reliance in the city's recorded pledge not only because it was given but also because the city officials will not want to countenance the granting of special rates and preferences by its publicly owned utility. Of course we must allow reasonable time for the city council to adopt the necessary ordinances and other corrective measures. Sixty days will be more than ample for all this. Therefore, our order herein should be made effective as of January 1, 1938, or with all meter readings on and after that date.

Having heard and considered all of the evidence and the arguments and briefs of counsel, and being fully advised in the premises,

ORDER

It is *ordered* that respondent, Puget Sound Power and Light Company, be, and hereby is, directed to cease and desist from offering or selling electrical energy to any person, firm, or corporation on any bases other than as provided in its regularly filed and published tariffs.

It is *further ordered* that respondent cease the practice of combining the demands and energy uses of buildings (including electrically lighted signs) not located on contiguous tracts of land and under common ownership or bona fide operation and served through a common meter.

It is *further ordered* that respondent cease the practice of sliding the demands of customers as described in our findings of fact and opinion herein.

It is *further ordered* that respondent cease the practice of offering or selling energy to owners and operators of buildings for resale to tenants unless the energy is received and paid for through a master meter at regularly filed and published rates and the distribution to tenants is handled by the building owner or operator as his exclusive business enterprise and any service rendered by respondent in connection therewith is compensated for on a reasonable basis.

It is *further ordered* that when building owners or operators collect accounts for respondent it shall pay them on a reasonable commission or other equitable basis in accordance with regularly filed and published tariffs and not exceeding the cost or value of the services rendered.

It is *further ordered* that the provisions of this order shall become effective as of January 1, 1938, or with all meter readings on and after that date.

It is *further ordered* that forthwith the secretary of the Department prepare and certify copies of these findings and order, and cause the same to be served upon the City Light and the city council of Seattle.

It is *further ordered* that the Department of Public Service expressly reserves jurisdiction over this matter for the purpose of issuing competent orders or taking other action from time to time as in the judgment of the Department may be proper, necessary, or expedient.

ARKANSAS DEPARTMENT OF PUBLIC UTILITIES

Re First Electric Coöperative Corporation

[Docket No. 226.]

Electricity, § 8 — Line construction — Inductive interference.

An electric utility, authorized to construct electric distribution lines, should take all necessary steps to protect existing electric, telephone, telegraph, and other facilities from any inductive interference that might be caused by the construction.

[September 24, 1937.]

ARKANSAS DEPARTMENT OF PUBLIC UTILITIES

Application by a rural coöperative corporation for certificate of convenience and necessity to construct, maintain, and operate rural electric lines; certificate granted and utility ordered to take necessary steps to protect against inductive interference.

By the Department: On the 2nd day of July, 1937, the First Electric Coöperative Corporation, an Arkansas corporation formed for the purpose of borrowing funds from the Rural Electrification Administration of the United States, and constructing electric distribution lines for the use of its members, filed an application for a certificate of convenience and necessity to construct, maintain, and operate rural electric distribution lines within a certain area in Pulaski, Lonoke, Faulkner, and Prairie counties. A detailed map showing the location of the proposed lines and the boundaries of the area to be served was filed with the application.

The Arkansas Power & Light Company, on May 24, 1937, had filed an application (Docket No. 209) for a certificate of convenience and necessity, seeking permission to extend certain lines in Pulaski county. This application covered a 2½-mile extension north of the Arkansas river in Camp Pike Gardens and a 4¾-mile extension south of the Arkansas river, running from Highway 10 to the Pulaski county farm.

Upon the filing of the application by the First Electric Coöperative Corporation it was found that the proposed Camp Pike Gardens extension of the Arkansas Power & Light Company was in the area that the coöperative proposed to serve. The Department, therefore, set the two applications for a joint hearing and same was held on July 14, 1937, in the offices of the Department, at which time all interested parties were present and given opportunity to be heard.

The evidence at this hearing disclosed that the First Rural Electric Coöperative Corporation is an Arkansas Corporation formed under Act 342 of the acts of the general assembly in the state of Arkansas for the year 1937. That the corporation has secured a loan of approximately $190,000 from the Rural Electrification Administration of the United States to construct rural electric distribution lines, and it was seeking permission of this Department to construct, maintain, and operate approximately 202 miles of rural electric distribution lines, to serve approximately 750 prospective members in the counties of Pulaski, Prairie, Faulkner, and Lonoke. That public convenience and necessity warrant the construction of the proposed electric distribution lines by virtue of the benefits that would accrue to the prospective members of the corporation through having adequate electric service available at all times. That the anticipated revenue to be derived from electric service will be adequate to pay the cost of such service.

The evidence also disclosed that the granting of the application of the Arkansas Power & Light Company in Docket 209 for the extension in Camp Pike Gardens would materially interfere with the proposed service of the coöperative in Mineral township in Pulaski county. There was consider-

able controversy in regard to this line and two prospective customers named Glover and Wetzler requested that they receive service from the Arkansas Power & Light Company. It was also developed that the locations of the lines of the Arkansas Light & Power Company, as shown on the map submitted with the application of the First Rural Electric Coöperative, were in error and if the Department followed the exact area boundary requested by the coöperative, there would be a considerable over-lapping of territory between the coöperative and the power company. The Department therefore instructed the coöperative and the company to agree upon the boundaries of the service area of each and to supply the Department with a map or a description of said boundaries. This instruction was followed out and an agreed boundary line was determined by the two.

Upon full consideration of this matter the Department is of the opinion that public convenience and necessity warrant construction of the rural electric lines proposed to be constructed by the First Electric Coöperative Corporation, with the exception of those portions which are modified by the agreed changes in the boundary line of the area proposed to be served and with the further exception that service to Glover and Wetzler in Camp Pike Gardens should be supplied by the Arkansas Power & Light Company.

The Department is further of the opinion that the First Electric Coöperative Corporation, in the construction of its electric distribution system, should take all necessary steps to protect existing electric, telephone, telegraph, and other facilities from any inductive interference that might be caused by the construction.

ARKANSAS DEPARTMENT OF PUBLIC UTILITIES

Re Arkansas Power & Light Company

[Docket No. 246.]

Electricity, § 8 — Electric line construction — Inductive interference.

An electric utility company may proceed with construction of rural electric lines on the most feasible route without compensating or agreeing to compensate for inductive telephone interference because of a grounded telephone line, since the consumer of electricity should not be made to bear the burden of converting a grounded telephone system into a metallic system.

[October 13, 1937.]

APPLICATION *by an electric utility company for authority to construct rural electric lines; utility permitted to proceed with construction without compensating or agreeing to compensate for inductive telephone interference.*

By the DEPARTMENT: This order discusses the liability of electric companies to operators of grounded telephone systems for inductive telephone interference caused by the construction of rural electric lines. The flow of electric current through the wires creates an electric field which induces a certain amount of current into every other wire within the same field. The flow of current from the power lines to the telephone lines causes a buzzing noise which interferes with the use of telephones. This transmission of the current through the air from one line to another is called induction.

The Arkansas Power & Light Company filed an application before this Department for a certificate of convenience and necessity to construct, maintain, and operate over 500 miles of rural electric lines in 20 counties of the state.

Representatives of the Arkansas State Forestry Commission stated at a hearing on this application, held September 25, 1937, that the construction of these proposed rural electric lines would cause serious inductive interference to the Forestry's telephone lines operating in some of the counties included in the application. A hearing was set by agreement to give both parties an opportunity to present in detail the problems of inductive telephone interference.

The agreed facts are substantially as follows: Approximately 60½ miles of Forestry telephone lines in Hot Spring and Grant counties would be made inoperative should the rural electric construction, as proposed, be authorized. There are approximately 2,500 miles of telephone line in the Forestry system. Most of the lines were constructed since 1933. These lines are used only for the State Forestry Commission's work. Whenever possible, the state highway rights of way are used to save in construction costs, in maintenance, and in patroling the system. The telephone lines are used to connect observers in lookout towers with the rangers and dispatchers. The telephone line is 9-gauge wire which passes through loop insulators and is of slack line construction. This construction is advocated by forestry experts to prevent breaking and interruption of telephone service when trees fall across the wire. The slack line construction and loop insulators permit the wire to sag to the ground under heavy loads rather than break. Wire fasteners and staples are used to attach the insulators to poles or trees. The wire fasteners will break and the staples will pull out with less tension than is necessary to break the telephone wire. When conveniently located, trees instead of poles are used to support the telephone lines. Approximately 20 of the 33 supports per mile are poles and the remainder are trees.

The Forestry Commission maintains a single telephone wire, called a grounded system, in which the ground replaces the customary second wire of the electrical circuit. A grounded telephone line may be converted into a metallic telephone line by the addition of a second wire and other minor appurtenances. Witnesses for the Forestry Commission estimated that it would cost $82.68 per mile to convert their grounded telephone lines into metallic lines.

A portion of the power line will parallel the telephone lines on the

same highway. It is admitted that serious inductive interference is caused by electric lines when they parallel the grounded type of telephone construction. Witnesses estimated that electric lines should be at least 500 feet from grounded telephone lines to prevent inductive interference.

The attorney for the State Forestry Commission requested that if this Department issue a certificate of convenience and necessity to the applicant to construct the proposed rural electric lines, it be conditioned upon the applicant's paying all, or part, of the costs of converting the affected portion of its grounded telephone system into metallic lines.

The question of liability for inductive interference has given all state Commissions a great deal of difficulty. The Forestry Commission and the power companies under the laws of this state, may construct their lines on the state highway rights of way without payment to the state. The induction from the power lines to the telephone lines injures in no manner the telephone property of the State Forestry Commission but does interfere with its use. The Department takes the position that if there is no physical damage or property injury, priority of construction should not influence its decision. The power company and the State Forestry Commission have equal rights to the use of the highways. Should electric construction necessitate the moving of poles or similar physical changes, the power company would be required to pay this expense.

There is no claim that the power line will not be constructed, maintained, and operated in accordance with the best standards of modern engineering practices. There is no way in which electric lines paralleling telephone lines of the grounded type can be constructed, maintained, and operated without causing interference by induction.

There are two methods, however, of telephone construction: (1) The grounded system, subject to inductive interference, and (2) the metallic system, not subject to inductive interference. On this subject, Deiser, on "The Law of Conflicting Uses of Electricity and Electrolysis," on page 21 summarizes the principles as follows: "Nor, can the holder of another franchise, such as the telephone, hope to recover the cost of remedying defective apparatus, and any telephone apparatus capable of being disturbed to any marked extent by induction, must be classified as defective, so long as there exist insulating or isolating devices, such as the complete metallic circuit, or the noninductive circuit, that would protect the telephone or telegraph lines." The grounded telephone construction has not been for many years in accordance with the best standards of modern engineering practices.

While this order may work a hardship on the State Forestry Commission, the Department is of the opinion that the consumer of electricity should not be made to bear the burden of converting a grounded telephone system into a metallic system. Progress and development in this state should not be impeded by levying additional costs on the electric consumers. To place this additional burden on the

electric consumers would be to deny the benefits of electric power to many areas.

The Department will require the electric utility to adopt feasible, alternate electric routes that will not cause damage to existing telephone construction. The hearing on the original application for a certificate of convenience and necessity indicated that the proposed route was the most feasible.

It is therefore *ordered:*

(1) That the Arkansas Power & Light Company may proceed with its construction as petitioned without compensating or agreeing to compensate for inductive telephone interference.

(2) This order shall not be construed to affect any rights or interests the State Forestry Commission may have in prosecuting its cause before the courts.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Public Utility Commission

v.

South Canaan Telephone Company

[Complaint Docket No. 11376.]

Discrimination, § 55 — Rates — Concessions to employees.

The practice of allowing a discount of 50 per cent to employee-subscribers who pay their telephone charges in full during the first fifteen days of each quarter is preferential, undesirable, and not in the public interest.

[October 4, 1937.]

COMPLAINT *against telephone rates; proposed rate schedules modified.*

By the COMMISSION: This complaint, which was filed by the Commission under date of April 19, 1937, is an inquiry and investigation upon the Commission's own motion into the reasonableness of rates of South Canaan Telephone Company, respondent, as set forth in Tariff Pa. P. U. C. No. 5, effective May 1, 1937. Concurrently with the filing of this complaint the Commission issued an order suspending the operation of said Tariff No. 5, for a period of 150 days, to September 28, 1937, and on September 23, 1937, issued another order further suspending the effective date of the Tariff to November 27, 1937. Hearing was held on June 18, 1937, at which time evidence was submitted relating to operating revenues, operating expenses, original cost of property, and other matters.

Tariff No. 5 provides for an increase from $6 to $15 per annum in the charge for switching service. This increase will affect 3 subscribers to the combined extent of $27 per annum. A total of 226 subscribers were being served as of December 31, 1936. Decreases are provided for service connection charges, reconnection charges, moving charges, and on local calls from public telephones; a discount of 50 per cent is provided for employee-subscribers; the time for payment of bills by the commonwealth of Pennsylvania, or any department thereof, is extended from fifteen to thirty days; and several minor changes are made in the rules and regulations. The annual base rates, which remain unchanged, are as follows:

	Business	Residence
Individual line	$36.00	$30.00
Multiparty line	30.00	24.00
Extension station	6.00	6.00

The original cost of the property amounted to $19,026.73 on December 31, 1936. No evidence was submitted relative to the reproduction cost.

During the three years ended December 31, 1936, the income available for return under existing rates was below 6 per cent on any finding of fair value that might properly be made by us from the evidence of record. Neither will the rates prescribed by Tariff No. 5 produce an excessive return. However, two of the changes proposed by respondent require special consideration; namely, the increase in the charge for switching service from $6 to $15 per annum, and the 50 per cent discount provision to employee-subscribers.

Respondent renders service through two exchanges in Wayne county, one located at South Canaan, the other at Waymart. All of the telephone lines are owned by respondent, except one line which is owned by the subscribers. This line is connected to the Waymart exchange from which the 3 subscribers on the line have been receiving switching service for an annual charge of $6, which respondent now proposes increasing to $15. The records of the Commission show that many telephone companies in Pennsylvania charge $6, others charge $9, and still others $12 per annum for switching service. After giving consideration to the fact that respondent is a very small company rendering service to only 226 subscribers in a rural community, and to the value of the switching service as reflected by the charges made for similar service by other companies in all sections of Pennsylvania, and particularly in the same general section which includes respondent's territory, we are of the opinion that the charge of $15 contemplated by respondent is oppressive and burdensome, and that it should not exceed the aggregate sum of $36 for the line from which the 3 subscribers thereon are given service. Therefore, each of these subscribers should pay individual rates of $12 per annum. However, in the event that additional subscribers are served from the same line, the annual charges should be as follows:

	Each, per annum
Total of 4 subscribers	$9.00
Total of 5 subscribers	7.20
Total of 6 or more subscribers ..	6.00

Tariff No. 5 provides that when telephone bills of employee-subscrib-

ers are paid in full during the first fifteen days of each quarter, a discount of 50 per cent will be allowed on the base rate charge for main stations. If such a rate is permitted to become effective, employee-subscribers will receive the benefit of preferential rates. We deem such a practice to be undesirable and not in the public interest. If respondent considers it necessary to offer extraordinary inducements to existing or prospective employees in order to acquire or retain their services, some other method should be devised to the end that the rate schedule will not provide for preferential treatment of any group of subscribers.

WISCONSIN PUBLIC SERVICE COMMISSION

Re Sylvan Electric Company

[2-U-1131.]

Service, § 58 — Commission functions — Abandonment.

1. The primary interest of the Commission on an application by a small electric utility corporation for authority to abandon service and for authority to dissolve, in view of the desire of customers to join a coöperative association, is to see that the customers are not deprived of electric service, and it is not for the Commission to question the reasonableness of the judgment of the customers in electing to be served by an agency other than a public utility, p. 480.

Consolidation and sale, § 10 — Powers of Commission — Compulsory sale.

2. The Commission cannot direct an electric utility company which proposes to abandon its property to sell to any other utility, p. 480.

Corporations, § 15 — Dissolution — Transfer of customers to coöperative.

3. Good and sufficient reason exists for the dissolution of a small electric utility corporation if public utility service is no longer to be rendered because the customers have elected to transfer to a coöperative association, p. 480.

Service, § 244 — Abandonment — Conditions — Connection with other utility.

4. Authority to abandon service furnished by a small electric utility company, because of the desire of customers to transfer to a coöperative association, should be granted, effective upon notification to the Commission that the present customers have been connected to and are being served electrically by some other agency, p. 480.

[September 23, 1937.]

APPLICATION *by an electric utility corporation for authority to abandon service as electric utility and for authority to dissolve; granted.*

By the COMMISSION: Under date of July 13, 1937, the Sylvan Electric Company petitioned the Commission for authority to abandon service as an electric utility and for authority to dissolve.

Hearing was held before Examiner W. A. Anderson at Sylvan on September 1, 1937. The company appeared by C. L. Kepler, Richland Center, President, and Fred C. Matthes, Viola, Secretary. Appearances were also entered for the Wisconsin Central Utilities Company by K. D. Knobloch, Savanna, Illinois, Assistant Chief Engineer, and F. R. Golden, Augusta, District Manager.

The Sylvan Electric Company is a locally owned utility serving approximately forty-four customers on 21 miles of line, including farm users and the unincorporated communities of Sylvan and Sabin in Richland county. The energy which the Sylvan Company distributes is purchased at wholesale from the Wisconsin Central Utilities Company at Viola. The great majority of the customers of the company is located in the towns of Forest and Sylvan in Richland county, although the line extends into the town of Kickapoo in Vernon county. The town of Forest is in the northwest corner of Richland county and the town of Sylvan is immediately to the south, while the town of Kickapoo is to the west.

Within the past two years there has been organized and placed in operation a rural electrification program by an organization known as the Richland Coöperative Electric Association, which, at the time of the application herein, was serving approximately 385 connected customers. Solicitation of the customers of the Sylvan Electric Company resulted in the expression of desire of all customers to join the coöperative and to be served by it. Testimony shows that the Rural Electrification Administration at Washington has made an allotment for the building of a coöperative line in the area served by the Sylvan Electric Company, and that the contractor doing the Richland Coöperative work has materials on hand to begin the immediate construction of the line.

The reason advanced for the desire to discontinue the rendition of service is the inability of the company to properly maintain its property and at the same time give service at rates which the farmers along the line are able to pay. The great majority of the present customers are stockholders in the company. They were obliged to make an expenditure of $300 to purchase stock in order to obtain the benefit of the company's rate. A rule provides that nonstockholders may be served by the payment of an additional $18 a year, but there has been but one addition to the line on that basis. The necessity of an outlay of $300 or the payment of additional monthly charge has precluded the addition of customers to the line.

The company furthermore claims it is not in a position to extend its lines in the territory which it would normally serve. The line was built in 1919 at a cost of $12,700. Each original subscriber paid in $300 and since that time each has been assessed $10 to take care of deferred maintenance.

The Wisconsin Central Utilities Company from which the Sylvan

Company purchased its wholesale energy at Viola, offered objection to the proposed abandonment on the ground that it would deprive the company of the sale of energy for resale because the Richland County Coöperative obtains its energy from another source.

Wisconsin Central Company officials met with stockholders of the Sylvan Electric Company and offered to take over the Sylvan Company's rights and continue to operate the line as part of its own rural system at its presently effective rural rates. The stockholders of the Sylvan Company later decided that they did not care to make the transfer and preferred to take their chance with the Richland County Coöperative, a compelling reason being that they felt that should the line be disposed of to another utility, such transfer would deprive others who had signed with the Richland County Coöperative from obtaining service.

The Wisconsin Central engineers have checked over the Sylvan Company's property and estimate that it would cost somewhere between $8,000 and $13,500 to completely rehabilitate the line. Each customer of the Sylvan Company owns his own meter, his fuse box, and his transformer. Under the present plan to abandon service the Sylvan Company stockholders would obtain for their interest only the net salvage value of the wire. The poles are in such condition that it would not pay to remove them.

[1, 2] The Commission's primary interest in this matter is to see that the customers of the Sylvan Company are not deprived of electric service. We may not direct the company to sell to any other utility. The election as to where the present customers of the Sylvan Electric Company are to obtain energy for their individual needs is a question which such customers should decide. It is not for the Commission to question the reasonableness of their judgment in electing to be served by an agency other than a public utility. Having made their election, we have left only the obligation to prevent a lapse in service between the cessation of service by the Sylvan utility now serving and the rendition of service by some other agency. The order herein will provide for that contingency.

The company has also requested authority to dissolve. It is a corporation under the provisions of § 181.03 of the Statutes. On the 13th day of July, 1937, the stockholders adopted a resolution to dissolve such corporation for the reason that it is no longer able to continue operation as a public utility. In compliance with the provisions of the statutes, a hearing relative to such dissolution was noticed and held in conjunction with the abandonment hearing.

[3] There appears to be good and sufficient reason for the dissolution of the corporation as a public utility if public utility service is no longer to be rendered, and the consent required by the statutes should be given.

[4] The Commission, therefore, finds that the application of the Sylvan Electric Company for authority to abandon service in the towns of Forest and Sylvan in Richland county and the town of Kickapoo in Vernon county should be granted, effective upon notification to the Commission that the present subscribers of the Sylvan Electric Company have been

connected to and are being served electrically by some other agency; and that the dissolution of the corporation at such time as public utility service is discontinued as authorized herein is consistent with the public interest.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Yellow Cab Company of Philadelphia

v.

David Chernikov

[Complaint Docket No. 11243.]

Monopoly and competition, § 18 — Commission power — Decision on unfair competition — Simulation of colors and markings — Taxicabs.

1. The Commission has jurisdiction to determine whether a taxicab operator has violated a Commission ruling against operators simulating the cars of a competing taxicab company by means of marking, painting, or designing of cars or any other act intended to invite patronage by deception; such a determination is not a purely judicial question which should be decided by the courts, p. 483.

Monopoly and competition, § 77 — Unfair taxicab competition — Simulation of colors, markings, and designs.

2. It is definitely in the interest of the public to provide against any confusion by anyone regarding the ownership of any particular cab, as between a taxicab company and operators of competing cabs who are accused of simulating colors, markings, and designs, p. 484.

Monopoly and competition, § 77 — Unfair taxicab competition — Similar colors.

3. A taxicab operator whose cab is painted a cream color which is so similar to the canary yellow of a competing cab company as to confuse the ordinary individual and normal user of taxicabs should repaint his cab in some color definitely different from canary yellow, or in some combination of colors subject to Commission approval, so as to eliminate any possibility of such confusion, p. 484.

Monopoly and competition, § 77 — Unfair taxicab competition — Similarity in "vacant lights."

4. Similarity in "vacant lights" was held not to be so close as to warrant an order directing any change therein where a taxicab operator used a green light on the roof above the windshield in the same position as a blue light used by a competing taxicab company, p. 484.

[September 9, 1937.]

COMPLAINT *by taxicab company against alleged simulation of coloring, marking, and design by operator of competing taxicabs; complaint sustained in part.*

By the COMMISSION: On September 4, 1936, Yellow Cab Company of Philadelphia, a corporation furnishing taxicab service in Philadelphia and vicinity under certificate of this Commission, filed complaints against five individuals who operate similar service, alleging that the respondents, individually and severally, had adopted and were using a design and color on their taxicabs closely similar to and deceptively imitative of the design and color of the taxicabs operated by the complainant and that this action confuses and deceives persons desiring to use the latter's service to the detriment of the public and in violation of the Public Service Company Law.

The several respondents are David Chernikov, William Alexander, Charles J. Morrow, William J. Adkins, and Isaac M. Cowan. Chernikov, Alexander, and Morrow are members of the Public Service Cab Association, an unincorporated group of individuals holding certificates authorizing taxicab service, limited in almost all cases to one motor vehicle. No hearings have been held in the complaints affecting Alexander and Morrow. There were several hearings in the Adkins and Cowan complaints but the record was completed only in the Chernikov complaint, which proceeding is now before us for consideration. By stipulation between counsel, certain applicable portions of the testimony in the Cowan and Adkins proceedings were included in the record of the instant proceeding. Further procedure in all four other proceedings was deferred pending determination of the Chernikov complaint, which has been treated as a test case, although all parties of record have not admitted that the determination in it will be accepted as binding in the other four.

The respondent, in his filed answer, made a general denial of the allegations of the complaint and avers that not only is the color of his taxicab distinctively different from complainant's but that it contains markings, insignia, and other prominent decorative features which clearly distinguishes his taxicab from those of the complainant.

The only question involved is clearly stated in complainant's brief, namely, whether the respondent's taxicab is so deceptively similar in color, design, and general appearance to the complainant's taxicabs as to confuse the public and to constitute simulation in violation of the ruling of the Public Service Commission, dated February 7, 1922.

This ruling was adopted as a result of proceedings in equity in the courts of common pleas of Philadelphia, instituted by this complainant against a large number of independent operators of taxicabs in Philadelphia to enjoin simulation of color, design, and general appearance of taxicabs operated by complainant. The ruling reads as follows:

"Attention of the Public Service Commission has been directed to proceedings of the courts of Philadelphia county, restraining certain individuals from so painting and marking their taxicabs as to simulate the cars of the Yellow Cab Company of Philadelphia.

"It is the sense of the Commission, and it hereby declares, that any acts by applicants for certificates of public convenience, or by persons or corporations to whom certificates have been

or may be granted, of the marking, painting, or designing their cars, so as to simulate cars of special design or markings, operated by other certificate holders, or any other act intended to invite patronage by deception, will be considered as sufficient ground for the rejection of applications or the revocation of certificates."

The complainant in this proceeding does not press for revocation of the respondent's certificate, but prays that the Commission shall issue an order directing him to change the color and appearance of his cab in such a manner that it will not invite patronage by deception and will not cause confusion among the public in Philadelphia.

The complainant is a corporation, the stock of which for several years prior to February 15, 1936, was held by the interests controlling the Philadelphia Rapid Transit Company, which operates the street railway system of Philadelphia. On that date the stock was sold to the present owners. The president of the company testified that during the negotiations for the sale the new management made an intensive study of the business as operated and immediately after the consummation of the sale began a reorganization thereof. This included a proposed replacement of all existing equipment with taxicabs of a unique color, design, and markings. Five principal changes in the cab equipment were effected: (1) A single color design for all cabs was adopted; (2) the entire taxicab was painted in a single color including top, body, fenders, and wheels; (3) a "bull's-eye" light, known as the "vacant light," was placed prominently on the top of the cab burning only at night as a signal that the cab was vacant; (4) a new type of seating arrangement was developed; (5) the markings on the cabs were changed. Beginning February 15, 1936, new cabs embodying these changes were placed in operation and at the time of the proceedings, 726 new cabs were being operated, the total value of this equipment being estimated at over $500,000. The management also instituted a campaign for increased business by advertising and radio announcements publicizing the new equipment and new operating policies of the company.

On or about July 1, 1936, according to complainant's testimony, cabs of a generally similar color, design, and general appearance as its new ones, which had not then as yet completely supplanted the old cabs, began to appear on the streets and shortly thereafter, as has been noted, the instant proceeding and the others involving the same issues were instituted.

[1] The respondent contended that the Commission is without jurisdiction to determine whether there has been a simulation and that such a determination is purely a judicial question which should be decided by our courts of law. In the Cowan proceeding (Complaint Docket No. 11247), a motion was made to dismiss the complaint on this basis. The sitting examiner refused to rule on the motion and submitted it to the Commission for consideration. That part of the Cowan record which included the motion to dismiss was incorporated in this proceeding so that we now have this motion before us for consideration.

The Commission has authority to

make rules and regulations, not inconsistent with the law, as may be necessary or proper in the exercise of its powers and the performance of its duties (§ 26, Art. V, P.S.C. Law and § 901, Art. IX, P.U.C. Law). The administrative ruling of February 7, 1922, is one of the regulations prescribed and adopted by the Commission and, as in the case of any other of its regulations, the ruling would be useless and of no avail if the Commission had no power as a fact-finding body to determine whether those subject to the regulation were complying with its provisions. We, therefore, do not agree with the position assumed by the respondent and the motion to dismiss for lack of jurisdiction will be denied.

[2–4] The cabs of the complainant, according to the record, are painted a definite shade of yellow known generally as "canary yellow." They are stock cars, being either of Pontiac or Plymouth make and there is nothing special about the general design of the cars, the distinction being in the arrangement of the lights, the color, and the lettering of the cabs. The entire cab, including body, wheels, hood, top, and fenders, is painted solidly in the canary yellow shade except for a minor variation in the Pontiac cars, in which a moulding, running lengthwise around the cab, is painted in black showing a stripe of this color about $\frac{5}{8}$ of an inch in width. Each cab is equipped with a blue light on the roof above the windshield. This is lighted at night when the cab is empty to indicate a vacant car available for use. The name of the company is lettered on both front and rear of all cars and also the front doors, usually in black, although a few of the cars first purchased have this lettering in silver. The company number of the cab appears in black on the back of the cab near the rear window.

The respondent offered no testimony personally but Joseph Marciano, business manager of the Public Service Cab Association, of which respondent is a member, testified his cab was painted entirely in a shade of yellow known as "cream" with the exception of a red band about $\frac{1}{2}$ inch in width extending entirely around the middle of the body of the car; that the cab carries the name of the association, namely, "Public Service Cab," in a diamond shaped insignia on both doors; that it also carries respondent's individual membership number in the association, this being Number 16, and that there is a green light on the roof of the car, which is lighted at night when the car is empty, similar except in color to that used on complainant's cabs. In addition, the respondent's name and certificate number is painted on the right side of the car near the hood, as required by the Commission.

At the several hearings held in this proceeding several witnesses testified in addition to those employed in complainant's business. These other witnesses included several "lay" or ordinary "citizen" witnesses, normally the regular users of taxicabs, as well as several psychologists and experts in color, the latter of whom testified at length regarding the relative colors used by the respective parties to the complaint. In addition, one of these witnesses conducted experiments in the hearing room illustrating differ-

ences and similarities between colors, analyzing them by rotating discs of various color combinations. Exhibits were filed illustrative of the color and design of the cabs of the parties, including painted panels representing the colors used by them. The several exhibits in colors were shown under varying conditions of lighting, including artificial light, dull daylight, and direct sunlight. As before stated, the respondent offered no testimony personally.

As might naturally be expected in a matter of this kind, much of the testimony is contradictory and not conclusive. The impressions of various witnesses with respect to the ease or difficulty in distinguishing between the respective taxicabs as shown by their testimony differs widely, but after careful consideration of the record we are of the opinion that the weight of the credible evidence establishes that the colors used by the two parties are not identical; that used by Yellow Cab Company being "canary" yellow and that used by respondent a "cream" color.

However, we have reached the conclusion that although the colors are not the same and there are other minor differences, both in marking and design of the respective cabs, the similarity between them is so strong that while the careful observer, intent upon distinguishing between them, will be able to do so without difficulty during hours of daylight, the ordinary individual and normal user of taxicabs will probably see no difference between them at night under any circumstances, or during the day when the door of the cab, on which is painted the insignia of the operator, is open in solicitation of business.

As previously stated by the Commission, ". . . the primary purpose of the ruling of the Commission with respect to simulating the color and design of taxicab companies, who have adopted a fixed color and marking, was to place within the control of the Commission the color schemes which taxicab companies should use in competitive territory . . ." (Pittsburgh Transp. Co. v. Yellow Cab Co. [1928] 9 Pa. P. S. C. 435, P.U.R. 1929A, 631, 640).

We are further of the opinion that the intent of the Public Service Commission in its ruling of February 7, 1922, was to guard against this probable inability of the normal patron of taxicabs to identify without being deceived the authorized operator of the service he is using. It is also our unanimous thought that it is definitely in the interest of the public to provide against any confusion by any one regarding the ownership of any particular cab, as between the complainant and others, thereby complying with what we have stated to be our understanding of the expressed ruling. To accomplish this purpose, the respondent's cab should be repainted in some color definitely different from "canary yellow" or in some combination of colors, subject to our approval, such as will eliminate any possibility of confusing the cabs of the Yellow Cab Company and the respondent. We are unable to find from the record that the similarity in "vacant lights" is close enough to warrant an order directing any change therein.

The record shows that the Yellow

Cab Company changed the color previously in use for its cabs on or about February 15, 1936, and discontinued the standard "yellow" color which had been in use for many years prior to that date. It is likewise true that the respondent changed the painting scheme of his cab when he began to operate a new one shortly after that date.

We, therefore, find that the respondent has painted his taxicab a color which simulates the cars of the Yellow Cab Company of Philadelphia, complainant, and thereby invites patronage by deception.

It is within the knowledge of the Commission that since the institution of this proceeding other individuals operating authorized taxicab service in Philadelphia began to operate cars of the same general type, color, and design as the respondent's. A copy of this report and order will be served upon all authorized taxicab operators in Philadelphia, with notice to advise the Commission within ten days from date of service whether they have adopted the same general design and color which we have found herein to simulate the cabs of complainant, with the view of determining further procedure in all such cases. Failure to advise the Commission as directed or the beginning of the operation of any such cab after ten days from date of service of the report and order will result in institution of proceedings to show cause why the certificate of the operator should not be canceled or other penalties imposed for violation of the ruling of February 7, 1922; therefore,

Now, to wit, September 9, 1937, it is *ordered:* That the complaint be and is hereby sustained.

It is *further ordered:* That the certificate of David Chernikov, respondent, at A. 20746, Folder 2, authorizing taxicab service in Philadelphia, be revoked and canceled unless within fifteen days from receipt of this order he shall have submitted to the Commission a new color design for the painting of the motor vehicle used in that service and unless within five days from date of approval thereof by the Commission he shall have repainted his cab in accordance with that design.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re Philadelphia Electric Company

[Temporary Rate Docket No. 1.]

Return, § 24 — Factors considered — Financial condition — Cost of money.

1. The Commission, in determining a fair rate of return, should consider the financial condition of the company, the rate at which it is able to obtain funds in the market, and the rate of return on the paid-in value of the securities presently outstanding, p. 489.

Return, § 87 — Electric utility — Temporary rates.

2. A return of 6 per cent was adopted for the purpose of fixing temporary electric rates pending investigation, p. 489.

Discrimination, § 39 — Rate schedules — Availability.

3. Rate schedules are discriminatory and preferential when they are not uniformly available to a company's customers in the respective consumers' classes, p. 490.

Rates, § 323 — Electric — Measurement of demand.

4. Demand should be measured by meter if electric rates are predicated upon a stated demand, p. 490.

Rates, § 255 — Optional — Company assistance — Conformity of rule with statute.

5. A rule referring to company assistance in the selection of electric rate schedules should conform to the provisions of Art. III, § 303, of the Public Utility Law, p. 490.

Discrimination, § 99 — Rates — Metering of demand.

6. A rule of an electric utility company relating to demand measurement is discriminatory when it contains a mandatory provision for the metering of demands in excess of 100 kilowatts while demands of 100 or less may be metered or assessed at the option of the company, p. 490.

[October 19, 1937.]

INVESTIGATION *of electric rates; temporary rates established.*

By the COMMISSION: Philadelphia Electric Company, respondent in this proceeding, serves electricity, manufactured gas, and steam heat to the public in the city of Philadelphia and portions of the counties of Bucks, Montgomery, Chester, and Delaware. Respondent's rates for electric service are set forth in its filed tariff, which consists of 39 separate schedules of rates and 26 riders supplemental thereto. An examination of the annual reports and of the papers, records, and documents of respondent on file with this Commission discloses the following information:

As of the close of the year 1936, respondent served electricity to 677,671 customers. The total book value of fixed capital as of December 31, 1936, including construction work in progress, amounted to $312,700,800 of which $45,315,172 was directly assigned to the gas and steam heat services, leaving a balance of $267,385,628. While this balance includes $23,155,087 of general property and construction work in progress, a portion of which is undoubtedly assignable to gas and steam heat services, the Commission, for the purpose of this report will make no such assignments and will treat the entire amount as electric fixed capital. However, no finding herein made shall be construed as binding upon the Commission in any subsequent determination of the investment in electric fixed capital.

From representations made by the respondent at Securities Docket No. 216 (in connection with issuance of $130,000,000 principal amount of first

and refunding mortgage bonds, 3½ per cent series, due March 1, 1967, approved by the Public Service Commission on March 1, 1937) the book value of all fixed capital, including the electric plant, represents original or historical cost with the exception of an amount of $4,126,484 representing an appreciation of property acquired from the Philadelphia Suburban-Counties Gas and Electric Company in the merger of October 31, 1929.

The total reserve for depreciation as of December 31, 1936, amounted to $33,491,848, of which $2,465,727 represents the amount reserved for gas and steam heat properties, leaving a balance of $31,026,121. This balance represents the accumulations of annual allowances reported by the company, based upon the judgment and experience of the management, plus certain appropriations from surplus apparently made to correct prior errors in judgment, less amounts specifically allocated to property retirements. Without making a determination of the reasonableness or accuracy of the method of accruing retirement reserves or of the amount accrued at December 31, 1936, we will assume, for the purpose of this report, that $31,026,121 is a fair and reasonable deduction for accrued depreciation.

Electric operations of respondent during 1936 produced revenues of		$58,614,946
From which are deducted:		
Operating expenses	$23,376,548	
Taxes	8,390,206	
Depreciation	4,200,000	
		35,966,754
Leaving an operating income of		$22,648,192

Although respondent filed new electric tariffs at the close of 1936 which were calculated to effect a total reduction of $1,126,000 in 1937, monthly reports filed by the respondent for the first six months of 1937 would seem to indicate that the estimated reduction in operating revenues has been offset to some degree by increased sales which may justify the conclusion that operating revenues for 1937 will not be materially decreased by the rate reduction filed in 1936.

Section 310 (d) of the Public Utility Law provides as follows:

"Whenever the Commission, upon examination of any annual or other report, or of any papers, records, books, or documents, or of the property of any public utility, shall be of opinion that any rates of such public utility are producing a return in excess of a fair return upon the fair value of the property of such public utility, used and useful in its public service, the Commission may, by order, prescribe for a trial period of at least six months, which trial period may be extended for one additional period of six months, such temporary rates to be observed by such public utility as, in the opinion of the Commission, will produce a fair return upon such fair value and the rates so prescribed shall become effective upon the date specified in the order of the Commission. Such rates, so prescribed, shall become permanent at the end of such trial period, or extension thereof, unless at any time during such trial period, or extension thereof, the public utility involved shall complain to the Commission that the rates so prescribed are unjust or unreasonable. Upon such complaint, the Commission, after hearing, shall determine the issues involved, and pending final

determination the rates so prescribed shall remain in effect."

[1, 2] In the determination of a fair rate of return, the Commission is of the opinion that consideration should be given to the financial condition of the respondent company, the rate at which it is able to obtain funds in the market and the rate of return on the paid-in value of the securities presently outstanding. Respondent has within the current year refunded its entire funded debt of approximately $130,000,000 by an issue of 30-year bonds at a nominal interest rate of 3½ per cent. Annual dividends on the paid-in value of preferred stock are presently paid at an average rate of approximately 5 per cent. In view of the rates at which respondent has demonstrated its ability to secure the money required to carry its investment in fixed property, the Commission is of the opinion the maximum allowable return under present conditions should not exceed 6 per cent. In adopting a return of 6 per cent for the purpose of this report, however, the Commission does not bind itself in the matter of the fair return which may be allowed in the rate inquiry instituted and now proceeding at Complaint Docket No. 11453.

From the foregoing we are of the opinion that the value of the electric plant may be fairly stated at $267,385,628, less accrued depreciation of $31,036,121, producing a depreciated value of $236,359,507. A fair return on the electric plant which, for the purpose of this report, is fixed at 6 per cent on the depreciated value, aggregates $14,181,570.

In imposing temporary rates, however, the Commission is of the opinion that due consideration should be given to the following matters:

1. The effect on 1937 operating revenues of rate reductions filed in the latter part of 1936.

2. Allowances for working capital, cost of financing, and other allowable items which may not be included in the book value of the property.

3. The cost of providing for measuring customers' demands instead of assessing demands as provided under certain existing rates.

4. The actual effect upon gross revenues and operating income of such tariffs and rates as may be filed in compliance with the order of the Commission.

5. Possible increase in operating expenses due to changing cost of labor, materials, and other factors.

After giving consideration to the possible effect of each of these items upon the rate base and the income available for return in 1936, the Commission is of the opinion that new rates should be filed which will result in a reduction of annual operating revenue in the amount of $4,233,000. In the latter part of 1936 the respondent filed rate schedules calculated to reduce annual revenues for 1937 in the amount of $1,126,000. The Commission will give consideration to this rate reduction, the actual effect of which cannot be determined at this time, and will direct the respondent to file tariffs effecting a further annual reduction of $3,107,000. The expected reduction, therefore, for the trial period should be at the rate of

$4,233,000 per annum. Previous rate reductions, although benefiting customers by providing kilowatt hours at a lower unit cost, have not materially affected the respondent's operating income because of the offsetting profit on increased use. Rate reductions ordered by the Commission, however, are predicated upon the theory that operating income will be reduced unless the amount thereof has been offset by increased investment in useful property. The Commission will require monthly reports to enable it to check currently the effect of the reduction contemplated by this order.

A review of the past rate reductions made by the respondent indicates that the present rate changes should be designed primarily for the benefit of residential customers served under rate schedules "R" and "RS" and the commercial customers served under rate schedule "GLP," and the changes in other rates shall be confined to such reduction as may be necessary to keep those rates within reasonable relation to revised rates in schedules "R," "RS," and "GLP."

[3] A review of the respondent's tariff of electric rates discloses 13 schedules which have been closed to new customers, and 3 which respondent contemplates closing. These rate schedules we find to be discriminatory and preferential, in that they are not uniformly available to the company's customers in the respective consumers' classes. Our findings with regard to these schedules are summarized as follows:

(A) Schedule "CS"—Cooking Service which must be eliminated immediately.

(B) The following schedules must also be eliminated, but because of the difficulty involved in the transfer of customers served thereunder to other schedules, a period of six months from the date of this order will be allowed within which to effect the elimination:
"M-SE"—Mixed Service
"M-SMS"—Mixed Service
"F-D"—Farm Service
"ABC"—Automobile Battery Charging
"BLP"—Block Light and Power
"HC-SC"—Heating and Cooking
"CHC-SC"—Commercial Heating and Cooking

(C) The following schedules upon which consumer-consumption data and other pertinent information is not now available must be made the subject of study and report to be submitted to the Commission within three months from the date of this order:
"P-SE"—Power Service
"P-SWP"—Power Service
"F-S"—Farm Service
"BP-SAN"—Block Power
"HV-SWP"—High Voltage Service
"F-SC"—Farm Service
"BP-SC"—Block Power
"BPS-SC"—Block Power—Small

[4–6] In certain other schedules, particularly the schedule identified as "GLP," optional provision is made for the determination of demand in kilowatts either by measurement through meter or by connected load count. This optional feature invites the possibility of discrimination between customers, in the same consumer class, having approximately the same demand. Without making a finding of the desirability for inclusion in rate schedules of the element of demand, it appears to the Commission that if the rates are predicated upon a stated demand, such demand should be measured by meter. Because of the importance of this matter as related to respondent's rate

structure, the Commission will direct that a study be made and submitted to it within six months from the date of this order, said study to set forth in detail the relationship existing between the connected load, the billing demand, and the measured demand of representative customers in each class of commercial and industrial activities.

As heretofore stated, respondent's tariff contains some 26 riders which are supplemental to its schedules of rates. Certain of these riders appear to be preferential and discriminatory, in that they are not available to all consumers within the various classes, while others require revision for purposes of clarity and compliance with the Public Utility Law and the rules and regulations promulgated thereunder. Of these riders, the "Distance Charge Rider" should be eliminated immediately. The "Extension Rider" should be revised to conform with the provisions of Regulation No. 2 relating to advance payments and to eliminate discrimination in the matter of minimum payments. And finally respondent will be directed to study and report to the Commission within three months from the date of this order, upon the necessity for, and the application of, all riders remaining in effect. Examination of the rules and regulations, contained in respondent's tariff, discloses certain provisions which are not in conformity with the Public Utility Law and regulations of the Commission issued thereunder. The rule designated as No. 11.5 referring to company assistance in the selection of rate schedules, should be revised to conform to the provisions of Art. III, § 303 of the Public Utility Law. The rule designated as No. 15.3 relating to demand measurement appears to be discriminatory in that it contains a mandatory provision for the metering of demands in excess of 100 kilowatts, while demands of 100 or less may be metered or assessed at the option of the company. The reasonableness of this provision should be studied by the respondent in connection with its report upon the measurement by meter of customers' demands.

In order that the Commission may be kept currently informed as to the changes in the investment in electric property and of the details of any changes in operating revenues and expenses, respondent will be directed to prepare and file monthly financial and operating statements with the Commission in the manner and form to be hereafter prescribed by the Commission. The Commission will thus be able to determine the actual effect of the rates filed under this order upon operating income and will be able to take such action as may be warranted at the expiration of the trial period in regard to the rates affected by this order.

CALIFORNIA RAILROAD COMMISSION

Re Railway Express Agency, Incorporated, of California

[Decision No. 30070, Application No. 21140.]

Monopoly and competition, § 65 — Express transportation by motor truck.

Ordinarily an express corporation which has been deprived of, or has dispensed with the service of, its underlying carrier does not by such a process establish a basis for a finding that public convenience and necessity require the operation of motor trucks either by itself or a subsidiary, particularly where other well-established certificated highway carriers capable of performing such underlying service are available and willing to provide transportation facilities; the express corporation should, wherever possible, make use of existing facilities, either highway or rail as the case may be.

[August 23, 1937.]

APPLICATION *by an express company for a certificate of public convenience and necessity to operate motor vehicles for the transportation of express matter; application granted in part.*

APPEARANCES: Edward Stern, Counsel for Railway Express Agency, Incorporated, of California, applicant; Wallace K. Downey, Counsel for Pacific Freight Lines, protestant; Hugh Gordon, Counsel for Valley and Coast Transit Company and Coast Line Express, protestants; H. C. Grondell, Counsel for Pacific Coast Railway, protestant.

WAKEFIELD, Commissioner: This is an application by Railway Express Agency, Incorporated, of California, a California corporation, hereinafter referred to as the "California Company," for a certificate of public convenience and necessity to operate an automotive service as a highway common carrier of property between San Luis Obispo and Santa Maria only, and between Guadalupe and Santa Maria only, limited to the transportation of express matter in the custody of Railway Express Agency, Incorporated, a Delaware corporation, referred to as the "Delaware Company," or its successors. No local or intermediate service between the points enumerated above is proposed by applicant; express matter is to be transported only under contract between applicant and the Delaware Company or its successors, and the rates proposed to be assessed are to be the rates of the Delaware Company or its successors.

Public hearings in this proceeding were held in Santa Maria on May 6 and 7, 1937, at which time the matter was submitted on briefs.

Applicant's reason for seeking the

certificate herein referred to is two-fold in nature:

1. Santa Maria Valley Railroad, over whose rails between Guadalupe and Santa Maria the Delaware Company now transports its express matter, has advised the Delaware Company that it is its intention to discontinue train service between these points.

2. On March 21, 1937, the Southern Pacific Company made certain changes in the schedules of both its north-bound and south-bound passenger trains; schedules on which the Delaware Company transported its express matter. These schedule changes involved an earlier departure time in several key instances, the result of which was to seriously delay the movement of the Delaware Company's express matter to the points involved herein.

Applicant's first reason involving the cessation of service by Santa Maria Valley Railroad Company is self-explanatory and no further discussion of this particular point appears necessary except to state that the railroad has agreed to maintain the service during the pendency of this application.

In regard to the second reason of applicant, it appears pertinent and necessary to discuss the effect of the changes by Southern Pacific Company in more detail so as to bring out more clearly the conditions resulting from the change.

Prior to the change in the scheduled operation of Southern Pacific Company train No. 69, express traffic originating in Los Angeles departed at 10 o'clock P.M.; the late departure permitted the Delaware Company to furnish shippers with pickups as late as 5 P.M., later pickups in emergencies, and permitted a clean-up of the entire express traffic for the day.

On March 21, 1937, the schedule of train No. 69 was changed to leave Los Angeles at 6:05 o'clock P.M. This earlier departure does not permit shipments to be picked up as late as 5 o'clock P.M. and to be brought to terminals, sorted, and way-billed in time to be moved on this train. Emergency shipments picked up or tendered at the Los Angeles terminals by shippers after 8 o'clock P.M. must be held over for next day's train departure. A clean-up of the day's business for movement on train No. 69 cannot be effected with the present service.

The next available express service is Southern Pacific train No. 1, leaving Los Angeles at 8 P.M. but, due to operating conditions and the necessity for the Southern Pacific to maintain its through schedule, that train cannot be stopped at Guadalupe.

Train No. 71, leaving Los Angeles at 8:20 o'clock A.M., affords the next available express service with connections at Guadalupe or San Luis Obispo. However, express so transported arrives too late in the day at Santa Maria to effect delivery suitable to receivers and this service results in a delay of approximately twenty-four hours.

A similar condition for traffic south bound from San Francisco has resulted from a change in the scheduled departure time of train No. 70 which now leaves San Francisco at 6:15 o'clock P.M.

Through counsel Pacific Freight Lines, Valley and Coast Transit Company, Coast Line Express and Pacific

Coast Railway protested the granting of the instant application. All of the protestants presented offers of service as underlying carriers to serve the needs of the Delaware Company in its capacity as an express corporation. All of these proposals of service were rather general in nature encompassing offers to provide a reasonable schedule suitable to the needs of the Delaware Company and including on the part of Pacific Freight Lines and Valley and Coast Transit Company offers to provide special equipment or locked hampers on regular equipment. Pacific Coast Railway offered to provide service from San Luis Obispo to Santa Maria by rail motor car. The record is barren of any cost figures in regard to these offers of protestants.

All of the foregoing statements were introduced into the record through witnesses and by various exhibits. In addition other testimony and exhibits showed that the bulk of the traffic (80 per cent) moved inbound from Los Angeles to Santa Maria, and some $289 a month accrued to the Santa Maria Valley Railroad Company under its control with the Delaware Company. The California Company introduced an exhibit to show that their proposed truck cost for this operation would be approximately $188 per month and, further, their witness Carpenter testified that this operation could be conducted even at a loss because of the fact that the Delaware Company retains the entire earnings from point of origin to point of destination and secures the long haul over the rail lines from which it is compensated under a prorate method.

Witness Chambers of the Santa Maria Chamber of Commerce testified that he had received a number of protests from shippers in regard to service rendered subsequent to March 21, 1937, and further testified that he held no brief for any of the carriers but was solely interested in seeing that service be restored to the status existing prior to March 21, 1937.

While this witness was on the stand, stipulation was entered into by all counsel that public convenience and necessity existed for the establishment of the same service existing prior to March 21, 1937; that testimony of public witnesses would be to that effect and that the sole issue to be determined was who should render the service as an underlying carrier for the Delaware Company.

With this determination in effect, I review the record and find that the California Company proposes to transport, for the Delaware Company only, property delivered to it by the Delaware Company at Guadalupe or San Luis Obispo for transportation to Santa Maria or vice versa, with no intermediate service between the points enumerated. It is apparent from the record that the Delaware Company, for whom applicant proposes to transport property, has available between San Luis Obispo and Santa Maria the services of three underlying carriers, two motor carriers and Pacific Coast Railway, offering to transport in a rail motor car.

The motor carriers referred to, Pacific Freight Lines and Valley and Coast Transit Company, have for some years been serving this territory under certificate from this Commission and are thoroughly experienced and well-established operators.

The third operator, Pacific Coast Railway, is a narrow gauge railroad which, while not at the present time operating the particular service referred to, has offered to reinstate this service, previously abandoned voluntarily, and operate a rail motor car on a schedule coördinated with main line rail operation for the benefit of express matter of Delaware Company.

Pacific Freight Lines and Valley and Coast Transit Company have made offers of special schedules, special equipment, and a service designated to meet exigencies of service changes by the Delaware Company's principal carrier, Southern Pacific Company, changes in whose schedule prompted the filing of the instant application. Between Guadalupe and Santa Maria the record is not so clear as to the adequacy of present underlying carrier service, particularly from the South from whence the bulk of the traffic moves.

The conclusion is inescapable that ordinarily an express corporation, which has been deprived of, or has dispensed with, the service of its underlying carrier does not by such a process establish a basis for a finding that public convenience and necessity require the operation of motor trucks either by itself or a subsidiary, particularly where other well-established certificated highway carriers capable of performing such underlying service are available and willing to provide transportation facilities. Rather, I believe the express corporation should, wherever possible, make use of existing facilities, either highway or rail as the case may be.

I am of the opinion, therefore, based on the record herein, that the Delaware Company has available the services of common carriers between San Luis Obispo and Santa Maria which will permit a resumption of service on identical schedules previously available and no need exists for the California Company to operate motor vehicles over the highway for such service between San Luis Obispo and Santa Maria. I am of the opinion, however, that the record will sustain a finding to the effect that public convenience and necessity require applicant's proposed service between Guadalupe and Santa Maria and that a certificate should ensue.

Railway Express Agency, Incorporated, of California is hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state, which is not in any respect limited to the number of rights which may be given.

WISCONSIN PUBLIC SERVICE COMMISSION

Re Wisconsin Power & Light Company

[CA-486.]

Orders, § 12 — Expiration — Later continuance — Effect.

1. A general order, relating to electric construction, which has expired and has later been continued by further order does not apply to a public utility company's application for authority and construction commenced in the period between expiration and continuance, p. 498.

Certificates of convenience and necessity, § 160 — Interested parties — Parties not subject to Commission jurisdiction.

2. The fact that the Commission is without jurisdiction to enforce its orders as to a coöperative association which is not a public utility is not a valid ground for objection to the coöperative being permitted to appear in a proceeding on application by an electric utility company for authority to extend service; the Commission should and will hear any interested party in making its determination, p. 498.

Certificates of convenience and necessity, § 29 — When required — Extensions in occupied territory.

3. An electric utility company is not required to obtain further authority from the Commission for construction of a portion of an electric line which is within a town where the company is authorized by certificate from the Commission to operate, but authority is required for extension of the line in other towns where the company does not have facilities and does not operate or render service, p. 498.

Monopoly and competition, § 54.1 — Electric utilities — Coöperatives — Duplication of facilities.

4. Public convenience and necessity do not require duplicated electric facilities, and an electric utility company line extension along a highway where coöperative lines extend is undesirable under provisions of the electrical code, which the Commission enforces jointly with the industrial commission, p. 499.

[August 12, 1937.]

APPLICATION *by electric utility company for authority to transact business as a public utility in certain towns; application granted in part.*

Present: Commissioner Nixon.

APPEARANCES: Wisconsin Power and Light Company, by R. J. Sutherland, Madison, Attorney, and B. E. Miller, Madison, Secretary; Richland Coöperative Electric Association, by Norris E. Maloney, Madison, Attorney, and A. Vernon Miller, Richland Center, President; George Fogo et al., Petitioners, by Levi H. Bancroft, Richland Center, Attorney.

By the COMMISSION: This proceeding was initiated before the Commission with a complaint filed July 2, 1937, by Norris E. Maloney, Madison, as attorney for the Richland Coöperative Electric Association, that Wisconsin Power and Light Company had begun construction of a distribution line in the town of Marshall, Richland county, where the company does not operate nor render service, without having complied with the requirements of § 196.49 (1), Statutes, and General Order 2–U–20 (P.U.R. 1932A, 411) to secure a certificate of authority from the Commission.

On the morning of July 3rd a company official advised Commissioner Robert A. Nixon orally that instructions had been given company employees to discontinue construction work in the towns of Marshall and Dayton, Richland county, until proper authority should be secured from the Commission. Just before the Commission offices closed on July 3rd the company filed an application which became the subject of this proceeding.

On July 12th the Commission issued a notice of hearing. A hearing was held at Richland Center on July 19th.

Mr. Maloney's complaint of July 2nd stated that the coöperative had planned to build a line along County Trunk A where the company had begun construction but that through an error the coöperative had failed to include the area in the maps filed June 4, 1937, under provisions of § 196.49 (2), Statutes, as amended by Chap. 17, Laws of 1937, so as to reserve the territory for the coöperative and prevent the beginning of public utility construction therein for a period of twelve months from June 1, 1937, when a supplementary loan agreement was entered into between the Federal government and the coöperative.

A "correctional" filing was made July 3rd to include part of the territory to be served by the proposed and partly built company line. This filing was subsequently modified to exclude from the filed territory sections or parts of sections in which the company line is nearly complete or where the proposed line would not duplicate existing coöperative lines. At the hearing counsel for the coöperative withdrew all objection to the part of the line, built or proposed, in sections 5 and 6, town of Richland; sections 1 and 2, town of Dayton; the east half of section 35 and all of sections 36 and 25 and the southeast quarter of section 26, town of Marshall, and section 31, town of Rockbridge, Richland county. These are the sections or parts of sections that would be traversed in building west from the junction of County Trunk A with Highway 80 and thence north to the George Fogo farm in section 25 with a spur to two proposed customers in the southwest corner of the town of Rockbridge. Counsel for the coöperative objected to the company's being authorized to build any farther north than the Fogo farm and objected also to the amendment of the company's application at the hearing to include a spur along Highway 80 in sections 32 and 33, town of Rockbridge.

Objections of the coöperative are also made to those parts of the proposed line that duplicate existing lines of the coöperative, particularly in the unincorporated village of Gillingham in the town of Marshall and at

Dosch's Corners in the town of Rockbridge where Highways 80 and 56 fork.

[1] On July 1st the Commission's General Order 2–U–965 (15 P.U.R. (N.S.) 364) expired by its own terms. It was continued in effect by order issued on July 16th, but at the time of the company's construction and application the only applicable general order of the Commission in effect was 2–U–20, *supra*. We therefore conclude that General Order 2–U–965 does not apply to this proceeding.

While the company had begun construction, even though without proper authorization, prior to the filing of the territory by the coöperative under provisions of Chap. 17, Laws of 1937, the subsequent modification to eliminate from the filing the area of the company line makes unnecessary any determination of whether this filing would prohibit further construction by the company.

[2] Counsel for the company and counsel for the petitioners objected to the coöperative's being permitted to appear in the proceeding. They gave as reason for their objection the assertion that the Commission has no jurisdiction to enforce its orders as to the coöperative because the coöperative is not a public utility. Under § 196.49, Statutes, and General Order 2–U–20, *supra*, a utility may not begin to operate or render service in a municipality nor extend its facilities into a municipality without first having secured a certificate of authority from the Commission. Such proceeding involves a determination as to whether public convenience and necessity require issuance of the certificate. The Commission should and will hear any interested party in making such determination. The fact that the Commission is without jurisdiction to enforce its orders as to a private citizen is no reason for the Commission to refuse to hear such citizen or group of citizens as the coöperative is. The objection of counsel to participation by the coöperative in this proceeding is therefore expressly overruled.

[3] Wisconsin Power and Light Company operates facilities and renders service in the western part of the town of Richland, Richland county, under a certificate of authority granted in Docket CA–85 (15 P.U.R. (N.S.) 211) which was made a part of the record in the present proceeding. Consequently, no further authority is required from the Commission for the portion of the line in the town of Richland. The company prior to July 1st, when it began construction of a line in the southern part of the town of Marshall and through the northeastern corner of the town of Dayton, had no facilities and did not operate nor render service in the towns of Marshall and Dayton. Neither does the company have facilities nor operate or render service in the town of Rockbridge. Authority therefore is required from the Commission for the portion of the line built or proposed to be built in the towns of Dayton, Rockbridge, and Marshall.

From the Richland part of the line a spur about one-half mile long into section 31, town of Rockbridge, is proposed to serve two customers, one of whom is a coöperative member who has not been reached by a coöperative line and probably will not be so reached. This spur apparently can be

constructed within the provisions of the company's extension rules, providing an investment of up to $400 per customer of company funds in rural distribution systems, and we shall grant the necessary authority.

The portion of the line, partly built or proposed, from the Richland town line west and north to the Fogo farm is about 3 miles long and would serve ten signed or interested prospective customers (see Exhibit 5). Since the company estimated that the most easterly 4 miles of the entire extension, starting in the town of Richland, will cost $3,402.28 or about $850 a mile, it is obvious that the 3 miles in Dayton and Marshall would come within the provisions of the company's rules which have been approved by the Commission and are a prima facie test of the economic feasibility of line construction. We shall therefore authorize this construction.

All but two of the sixteen petitioners in this matter who ask that the company be authorized and directed to serve them reside along the part of Highway 56 from where it leaves Highway 80 in the southern part of the town of Rockbridge and runs northwest through Gillingham in the town of Marshall, a distance of more than 4 miles. Two other petitioners are George Fogo and Stacia Fogo who would be served on the 3 miles of line in Dayton and Marshall which we propose to authorize. The petitioners are the remnant of a group which began efforts to get public utility electric service in the summer of 1935. In Docket CA–85, *supra,* the company was denied authority to serve them pending organization of the coöperative and in Docket CA–237 was denied authority to extend lines to them because the required line was not shown to be economically feasible. The petitioners who reside along Highway 56 have an energized coöperative electric line near their premises from which many of their neighbors are receiving service. The presence of this coöperative line limits the potential market for the company's services virtually to the petitioners on any line that might be built.

Two of the petitioners, Sadie Ross and Nel A. Truesdale, have premises in Gillingham without any buildings on them. We stated in our order of January 29, 1937, in Docket CA–237 that their plans gave no assurance that the premises would require electric service within the near and reasonable future. No testimony was offered by either the company or the petitioners in the present proceeding to show that the situation has been altered since January with respect to these two premises.

[4] For the company to serve three of the petitioners residing near the fork of Highways 80 and 56 would require extension of an existing line along Highway 80 north from the town of Richland about one mile. Whether such line could be constructed in accordance with the company's rules without customer contributions appears doubtful in view of testimony in Docket CA–237 that B. F. Straight, owner of land on both sides of the highway south of the three petitioners, will not grant right of way to the company. The company would incur considerable expense in a condemnation proceeding. Assuming, however, that the line would be economically feasible, we consider it un-

desirable from the standpoint of public safety to authorize construction of this line. Coöperative lines now extend along Highway 80 in this area. Another electric line along the highway appears undesirable under provisions of the electrical code which we enforce jointly with the Industrial Commission. Public convenience and necessity do not require duplicated electric facilities.

For the company to serve the five petitioners in Gillingham and four in the town of Rockbridge, more than 4.5 miles of line beyond the Fogo farm would be required, if private right of way is used and a considerably longer line if public highways were followed (see Exhibit 5). Two of the five petitioners in Gillingham, however, were held not to be prospective customers within the near and reasonable future in our order in Docket CA–237. Consequently the more than 4.5 miles of line would be required for only seven customers. The likelihood of additional customers is remote, as we have pointed out, due to the presence of energized coöperative lines from which many persons are being served. Such an extension obviously would not measure up to the standard of economic feasibility in the company's extension rules, while its treatment together with the 3 miles in Dayton and Marshall as one project would cast doubt on the economic feasibility of the total 7.5 to 8 miles. Again, however, we state that even if economic feasibility could be shown, we are opposed on grounds of public convenience and necessity to duplicating existing electric facilities, and on grounds of safety to having electric lines of two separate systems on the same roads and highways.

One petitioner resides in section 29, town of Rockbridge, about a mile north of Dosch's Corners and more than a mile southeast from the most southerly of a group of four petitioners in sections 19 and 30 in the town. The company has not indicated that it intends to serve this petitioner (see Exhibit 1). If this petitioner were to be served from Dosch's Corners, an extension of 2 miles to serve four customers would be necessary. It is doubtful that such line could be built to comply with the company's extension rules and be economically feasible. If this petitioner were to be connected to a line from northwest of his premises, more than 5.5 miles of line north and east of the Fogo farm would be required to serve eight customers. Such construction is obviously not feasible under the company's rules.

Before making our findings and determination, we wish to severely condemn the flagrant violation of § 196.49, Statutes, and General Order 2–U–20, *supra,* by the company in beginning construction in municipalities where it has no operating rights without first having applied for and secured a certificate of authority from the Commission. The company states that the construction crew "made a mistake" and started the line at the farther end rather than in the town of Richland where the company's construction would have been legal and proper, since the utility has previously been granted operating authority there. The record is clear that construction continued for three days, namely, July 1st, 2nd, and 3rd; cer-

tainly the "mistake" could have been rectified in that time. The company's application for authority was not filed until July 3rd and only after Commissioner Nixon had telephoned to a company officer. It has not hitherto been the company's practice to put a crew on a line construction job when part of the line requires Commission authorization until such time as the company had received or had been assured the necessary certificate of authority. The company counsel states that the utility had proposed the extension only at the demand of prospective customers. Yet the testimony is undisputed that the company was the mover, at least as to some customers, in the town of Marshall where construction was started and customers signed up either the day before building began or after the line was partly up. The company is the more remiss in this matter inasmuch as its secretary and senior counsel in an earlier proceeding before the Commission asserted the company's complete rectitude and its strict compliance with the law and Commission rules in all proceedings before the Commission.

The Commission has met and considered all the facts and evidence presented in this proceeding and as a result thereof makes the following findings and determination.

The Commission finds and determines in view of the foregoing facts and considerations:

1. That public convenience and necessity require that Wisconsin Power and Light Company be granted a certificate of authority under § 196.49 (1), Statutes, and General Order 2–U–20, *supra*, to operate as a public electric utility in section 31, town of Rockbridge, in sections 1 and 2, town of Dayton, and in the east half of section 35, the southeast quarter of section 26, and all of sections 25 and 36, town of Marshall, Richland county, Wisconsin.

2. That public convenience and necessity require that Wisconsin Power and Light Company be authorized under § 196.49, Statutes, and General Order 2–U–20, *supra*, to extend its electric distribution system in the above-described territory in accordance with its filed extension rules.

3. That public convenience and necessity require that the part of the company's application not embraced in findings 1 and 2 be denied.

COLORADO PUBLIC UTILITIES COMMISSION

Re The Colorado Trucking Association

[Case No. 1585, Decision No. 10449.]

Rates, § 647 — Complaints — Filing by association.

1. A complaint by a trucking association against motor carrier rates does not contain sufficient and necessary allegations to vest jurisdiction in the Commission to hear and determine the matters complained of, when no allegations appear in the complaint wherein it may affirmatively be determined that the association does have such an interest as would justify the Commission in considering a complaint by said association, nor is there any allegation that said association is authorized to represent motor carriers who do have a justiciable interest, nor is request made to amend the complaint affirmatively to show these facts, p. 503.

Procedure, § 43 — Service of notice — Rate proceeding — Registered mail.

2. All services of notices under complaints involving rates of common carriers must be by registered mail, and if notice is not so served, the Commission is without jurisdiction until proper and legal service has been made in the manner and form provided by law, p. 504.

[August 3, 1937.]

COMPLAINT *against motor carrier rates; complaint dismissed without prejudice.*

APPEARANCES: Richard E. Conour and Elizabeth A. Conour, Denver, for North Eastern Motor Freight, Inc., and for T. A. White, representing Rio Grande Motor Way, Inc.; Marion F. Jones, Denver, for The Colorado Trucking Association; J. F. Rowan, Denver, for The Colorado Transfer & Warehousemen's Association.

By the COMMISSION: The instant matter is before the Commission upon a complaint filed by "The Colorado Trucking Association, by Marion F. Jones, Attorney." Said complaint was filed June 10, 1937. Thereafter, copies of said complaint, together with the Commission's formal "Notice of Hearing" were mailed by ordinary mail to various individuals, including representatives of the Motor Truck Common Carriers Association, The Colorado Transfer & Warehousemen's Association, J. R. Arnold, president of North Eastern Motor Freight, Inc., and Rio Grande Motor Way, Inc.

The matter was first set for hearing on July 8, 1937, but thereafter, on the Commission's own motion, was continued until August 4, 1937. On July 19, 1937, a "Motion to Dismiss Complaint of The Colorado Trucking Association" was received, and said motion was set down for oral argument by the Commission on July 29, 1937. Said motion was filed by the North Eastern Motor Freight, Inc., and Rio

Grande Motor Way, Inc., who appeared specially for the purpose of the motion only.

The complaint concerning which said motion to strike was filed, attacks the reasonableness of the rates heretofore prescribed by the Commission in the instant case in reference to the transportation of fresh meats and packing house products between Denver, Colorado Springs, and Pueblo; certain rates heretofore prescribed for the movement of live stock in less than truck-load shipments; the rates heretofore prescribed for the movement of used household goods and office fixtures; the 20 per cent differential heretofore prescribed for the operation of irregular common carriers when in direct competition with scheduled common carriers, and the rate on canned goods moving in quantities of 20,000 pounds or more between Fowler, Manzanola, and Denver.

The motion to dismiss the complaint alleges, inter alia, that The Colorado Trucking Association is not a proper party to make complaint to the Commission against the rates of any public utility; that the complaint filed does not conform with the Rules of Practice and Procedure of the Commission; that copies of said complaint and notice of hearing had not been served in the manner and form required by § 44 of the Public Utilities Act of 1913; that approximately 1,500 parties in interest in the state of Colorado should have been served with a copy of the complaint, including holders of several hundred so-called "irregular" certificates of public convenience and necessity authorizing call and demand service throughout the state, and that The Colorado Trucking Association is not a common carrier by motor vehicle, that it does not represent any motor vehicle carrier holding a certificate containing the 20 per cent differential provision complained of, and that it has no justiciable interest in the premises sufficient to invoke the jurisdiction of this Commission.

For the purpose of determining the motion described, we believe only two matters need be considered and passed upon by the Commission. The first is whether the complaint as filed is sufficient to invoke the jurisdiction of the Commission, and second, whether sufficient service has been had under said complaint to give the Commission jurisdiction over the parties in interest who have filed a motion to dismiss the complaint.

It is true that if we should decide the first question in the negative, it would not be necessary to pass upon the second, but we believe for the sake of precedent that both questions should be decided.

[1] No allegations appear in the complaint wherein it may affirmatively be determined that The Colorado Trucking Association does have such an interest in the rates prescribed by the Commission for the transportation of freight for hire in Colorado as would justify the Commission in considering a complaint by said association. Neither is there any allegation that said association is authorized to represent motor vehicle carriers of freight for hire in Colorado who do have a justiciable interest in the aforementioned prescribed rates of the Commission. No request was made to amend said complaint to affirmatively show these facts, and while the Commission does not desire to be tech-

nical, either in matters of evidence or of procedure, we believe that in view of the fact that objection has been made, we have no other recourse than to hold that said objection is well taken and that said complaint does not contain sufficient and necessary allegations to vest jurisdiction in the Commission to hear and determine the matters complained of.

[2] On the question of service, we find that so far as "complaints" are concerned, our procedure is governed by § 45 of Chap. 127, Session Laws of 1913, known as the Public Utilities Act, which provides, inter alia, that "Upon the filing of a complaint, the Commission shall cause a copy thereof to be served upon the corporation or person complained of. Service in all hearings, investigations, and proceedings pending before the Commission may be made upon any person upon whom a summons may be served in accordance with the provisions of the Code of Civil Procedure of this state, and may be made personally or by mailing in a sealed envelope, registered, with postage prepaid."

Section 27 of Chap. 134 of the Session Laws of 1927, as amended by Chap. 121 of the Session Laws of 1931, commonly known as "House Bill No. 430," providing for the regulation of the use of the public highways of Colorado by motor vehicle carriers engaged in the transportation of persons and property for compensation, provides that:

"All provisions of the Public Utilities Act of the state of Colorado, Chap. 127, Laws of 1913, and all acts amendatory thereof or supplemental thereto, shall, in so far as applicable, apply to all motor vehicle carriers subject to the provisions of this act."

In view of the provisions of law above referred to, it is quite clear to the Commission that all service of notices under complaints involving rates of common carriers, must be by registered mail. This provision was not complied with in the instant case, and even though both of the parties who have moved to dismiss the complaint for lack of proper service were sent a copy of the complaint and of the notice of hearing by ordinary mail, we believe that if they see fit to raise the question that their notices were not properly sent by registered mail, the Commission has no alternative except to hold that it is without jurisdiction until proper and legal service has been made in the manner and form provided by law.

After a careful consideration of the record, the Commission is of the opinion, and so finds, that the complaint filed by The Colorado Trucking Association on June 10, 1937, should be dismissed.

Industrial Progress

Increases Tractor Plant

A large addition to the International Harvester Company's tractor works at 2600 W. 31st Boulevard, Chicago, will be completed in May, according to a recent announcement by officials of the company. The new addition, with buildings and equipment, will cost in excess of $1,000,000. The construction job, now under way, when completed will make the company's Chicago tractor works one of the world's largest tractor manufacturing establishments.

The new addition will be devoted entirely to the production of International Harvester's line of crawler-type tractors as distinguished from wheel-type tractors. This line of tractors, known as TracTracTors, is used in both industry and agriculture. Five different-size models will be produced in the enlarged plant, including two models powered by Diesel motors. The Diesel engines will continue to be made in the company's manufacturing works at Milwaukee.

Approximately 6,500 men are now employed at Harvester's tractor works.

Metalclad Switchgear with Open Air Equipment

Delta-Star Electric Company, Chicago, Illinois announces a new out-of-door 5 kv steel switchhouse with top switch rack.

The weatherproof switchhouse encloses a 15 kv, 2000 ampere oil-blast circuit breaker with instrument transformers and panel equipped with control switch, indicating lamps, instruments, relays and test switches.

Primary connections are brought out through a non-magnetic roof supporting sealed type roof entrance bushings. Six vertically mounted hook stick switches serve to disconnect the circuit breaker from the line. The horizontally mounted three pole switch on top of the framework and operated from ground level by-passes the equipment insuring service continuity during testing and inspection periods.

New Thermometer Catalog

A new Industrial Thermometer Catalog, No. 1125B, has just been published by C. J. Tagliabue Mfg. Co., Park and Nostrand Aves., Brooklyn, N. Y., makers of indicating, recording and controlling instruments.

This catalog contains 24 pages of conveniently arranged listings of the complete line of TAG Industrial Thermometers. Its pages are filled with highly pertinent information about the construction of these instruments with many interesting illustrations clearly showing the various forms and connections that fit every application.

In addition will be found many miscellaneous thermometers including metal and wood back, cup case, etc. Hygrometers, U-Gages, Mercurial Vacuum Gages and Mercurial Barometers are also clearly illustrated and completely described.

A request to C. J. Tagliabue Mfg. Co. will bring promptly a copy of this new, free catalog.

Contract is Awarded For 55 Miles of Fence

William F. Brannan, President of the Anchor Post Fence Company, has announced that the largest fencing contract ever let in this country had been awarded the Company by the Metropolitan Water District of Southern California.

The $188,000 contract calls for 55 miles of six-foot chain link fence, which will be erected around the reservoirs and on both sides of the open sections of the Colorado River Aqueduct bringing drinking water from Parker Dam to Los Angeles and vicinity. The exact location of the job is in the Imperial Valley Desert northeast of the Salton Sea.

Mr. Brannan explained that more than fifteen hundred tons of steel would be required. The fence will be manufactured at the Baltimore and Los Angeles plants of the Anchor Post Fence Company. It is estimated that the main plant at Baltimore will be kept running two shifts for forty-five days. The fence must be manufactured, transported to the site and erected in place by May 1, 1938.

New Diesel Battery Line Announced by Goodrich

A complete line of specially constructed batteries for Diesel starting service is announced by The B. F. Goodrich Company, Akron, Ohio. In the line are four 6-volt types, two 8-volt types and ten 12-volt types.

Eight of the batteries are of conventional construction and eight built with the Kathanode construction. Port Orford Cedar separators, the highest type wood known for this purpose, are used in the separators of the conventional type.

In the Kathanode type flexible spun glass, Kathanode retainer mats are used on both sides of the positive plates, holding the active materials adjacent to them for a longer period, and thus increasing battery life.

The new line of Diesel batteries, according to the manufacturer, are built with thinner

plates than heavy duty types, giving instant reaction and quick motor turnover. Adequate power is available instantaneously to ignite the fuel oil and start the motor in coldest weather.

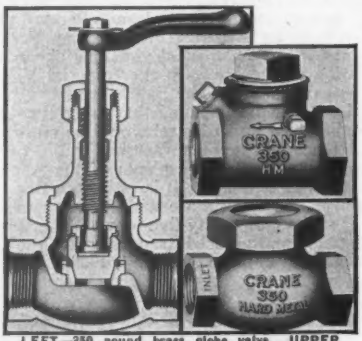
All batteries, except the 8-volt types, are assembled in hard rubber cases. The 8-volt types are assembled in hard rubber jars and wood cases. Connectors are of solid lead, except the 8-volt types, which are of flexible copper with lead coating to prevent corrosion.

Cell covers are made of reinforced hard rubber, terminal posts are of the braced type, with rubber gasket seals and locknuts to prevent acid seepage, allowing for vibration of plates without causing damage. Splash proof vents are used and ample sediment space provided to prevent battery failure as a result of short circuits arising from an accumulation of sediment touching the plates.

The Goodrich Company also has a complete line of batteries for automobiles, trucks, buses, tractors and other vehicles.

Crane Offers Brass Valves for 350 Pounds Steam

A NEW line of brass screwed end globe and check valves for 350 pounds steam pressure at 550 degrees temperature is being offered by Crane Co., Chicago. These valves are designed especially for high pressure steam



LEFT—350 pound brass globe valve. UPPER RIGHT—350 pound brass swing check valve. LOWER RIGHT—350 pound brass lift check valve.

lines such as are used on oil and gas field boilers for deep well drilling operations. They also may be used on non-shock cold water, oil or gas lines up to 1000 pounds. Their sizes range from ½-inch to 2-inches.

The globe pattern brass valve (62-P) is of the union bonnet design (except the 2-inch which has a bolted bonnet) and has Crane nickel alloy plug type disc and Excelloy body seat ring. The stuffing box is supplied with a gland and is filled with high grade packing which may be replenished when the valve is wide open and under pressure.

The horizontal lift check valve also has a union bonnet except the 2-inch, which has a bolted cap. Discs are of the piston-guided type and seats are renewable screwed in rings of Crane nickel alloy. The horizontal swing check valve (No. 78-E) which may be used either for horizontal or upward flow, has screwed cap and tapped hole in the body to facilitate regrinding of the disc.

In order to have a companion line of brass gate valves for this same service, a 350 pound steam rating at 550 degrees F. has been added to the regular Crane No. 230-H brass gate valves.

Johns-Manville Issues Book and Movie on Heat Control

A MOTION picture and a booklet have been prepared by Johns-Manville setting forth the story of heat and its control from earliest times and stressing the advancement that is constantly being made in the more effective utilization of heat in industry.

The motion picture is entitled "Heat and Its Control," and runs for 50 minutes. The 48-page booklet, entitled "Heat," covers the same ground as the movie, but in greater detail. The booklet is generously illustrated. It may be had on request.

Rex Electric Automatic Water Heaters

REX electric automatic storage water heaters are described and illustrated in a 4-page bulletin issued by the manufacturer, The Cleveland Heater Company, Cleveland, Ohio. Accurate temperature control is effected by the Rex snap-action thermostat and the heating unit is the imbedded type. Rex water heaters are available in six models and eight sizes, ranging from 5 to 100 gallons.

Fifty Years with G-E

MR. Charles N. Mason recently completed 50 years of service with the General Electric organization. Only two other living men enjoy this distinction.

Mr. Mason is president of Electrical Securities Corporation and G. E. Employees Securities Corporation, both wholly owned associated companies of the General Electric Company.

Rugged Suspension Insulators

TWO rugged suspension insulators, one of petticoat design and one with a smooth disc, have been announced by the Ohio Brass Company, Mansfield, Ohio. These insulators, known as Huskitypes, are provided with high impact resistance to minimize breakage from various forms of missiles and from possible rough handling during shipment and installation.

The petticoat-type is intended for use on lines which are subject to rock throwing and which demand an insulator with standard flashover values and full leakage distance. The other type, designed to deflect missiles from

its smooth under surface without damaging the insulator, is for use on lines which are subject to gun fire. The elimination of the petticoats on the under side of this unit lowers the dry and wet flashover values only slightly from standard values.

"Patrol" Safety Valves

"PATROL" safety devices for water heaters are described in a 4-page illustrated folder issued by The Patrol Valve Company, Cleveland, Ohio.

The Patrol valves include temperature-pressure relief valves, pressure relief valves, self-closing relief valves and emergency gas shut-off valves. "Patrols" are constructed from rugged brass. Bibb washers are made from a special steam gasket composition and cap gaskets from graphited asbestos, according to the manufacturer. "Patrols" are listed by The American Gas Association Testing Laboratories.

Davey Announces New Compressor

ANNOUNCEMENT of a new 315 ft. side-by-side compressor to be introduced at the Cleveland Road Show was made recently by the Davey Compressor Company, Inc., Kent, Ohio. According to Davey engineers this new unit solves the previously perplexing problem of transporting machines of this size from place to place and has a shorter turning radius than any other compressor of this size now on the market.

Stream-lined, yet conservative in style, it is 127 inches long; 58 inches wide, and 70 inches high. In it are incorporated all of the patented features of Davey air-cooled compressors including the multiple V-belt drive. One of the new machines is shown on the Akron, Ohio, crossing elimination job of Bates & Rogers Construction Co.

1937 Incandescent Lamp Sales Set New Records

A PRELIMINARY estimate indicates that more than a half billion large incandescent lamps were sold in the United States during 1937, according to a review of the electrical industry prepared by Guy Bartlett of the General Electric Company. A total of 955,000,000 is indicated for both large and miniature lamps—515,000,000 large and 440,000,000 miniature. Each of the totals is the highest yet attained.

Perfection of a new high-efficiency tungsten filament, which increases the light output of incandescent lamps 10 per cent without using additional current, was one of the outstanding developments in the field of lighting during 1937. This increase in efficiency results from greater concentration of the lamp filament. With the new filament there is less cooling by the gas in the lamp, and more light for a given amount of current results.

Lincoln Announces New Electrode for Welding

A NEW mild steel arc welding electrode, designed particularly for use with small alternating current transformer type arc welders which is said to simplify welding with this type of equipment and provide weld metal of high quality, is announced by The Lincoln Electric Company, Cleveland, Ohio.

The new electrode, designated "Transweld," is the result of extensive research on the part of Lincoln engineers to develop a rod which

Side-by-Side Compressor

would meet the special requirements of small A. C. transformer welders.

"Transweld" has a very heavy extruded coating and, unlike ordinary electrodes used with small alternating current welders, has a very stable arc, easy to strike and hold. Because of its stable arc, the electrode permits making welds in smooth well-shaped beads. Another advantage is in regard to slag removal. Slag is easily removed from "Transweld" deposits.

Weld metal produced by the electrode possesses high physical properties. Tensile strength is 75,000 to 85,000 lbs. per sq. in., yield point 60,000 to 68,000 lbs. per sq. in., and ductility 20 to 30% elongation in two inches.

"Transweld" is suitable for making all types of welds in flat, horizontal, vertical or overhead position. The electrode operates equally well with direct current of either straight or reversed polarity.

"Transweld" is made in three sizes: 3/32, 1/8 and 5/32-inch. The smaller size comes in 12-inch lengths, the other two in 14-inch.

Effective Pole Reënforcement

A POLE reënforcement which may be used repeatedly, which positively prevents snapping of poles at the ground line, and which

Malleable Iron Stake Support

may be quickly and cheaply installed, is being offered by the Eastern Malleable Iron Company, Naugatuck, Connecticut.

The device consists of a malleable iron stake support about six feet long which fits snugly against the pole body, and is bound to it by a steel band or clamped with steel clamps. About four feet of the support is driven below the ground surface. The total overall length of the support is five feet six inches. Being made of shock resisting malleable iron, the support may be hammer driven without damaging it.

The characteristics of malleable iron particularly adapt it for use in the support. There is no danger of sudden failure or snapping because of the high ductility of the iron. Its extremely high resistance to corrosion gives the support durability even in watery soil. The constant weaving of the pole subjects the reënforcement to great strain, and would, in the case of other metals, cause crystallization and ultimate failure.

Sidewalk installations may be made easily, and, if required, two stakes may be used to provide double reënforcement.

The stakes are manufactured in three sizes and weights, the weights having been calculated accurately according to pole height, span length, and wire load.

The support prolongs pole life, provides safety where inadequate guying facilities are found, and increases pole strength in the event of increased wire loads.

Niagara Hudson Subsidiary Plans Construction

CENTRAL New York Power Corp., subsidiary of Niagara Hudson Power Corporation, expects to spend $16,529,000 for construction of new electric facilities, by December 31, 1939, according to a statement made by A. W. Andrews, chief engineer for the company.

Mr. Andrews stated that the work will include about 1,000 miles of rural distribution line, and addition for the Oswego steam plant and two hydro-generators at the Oswego dam site.

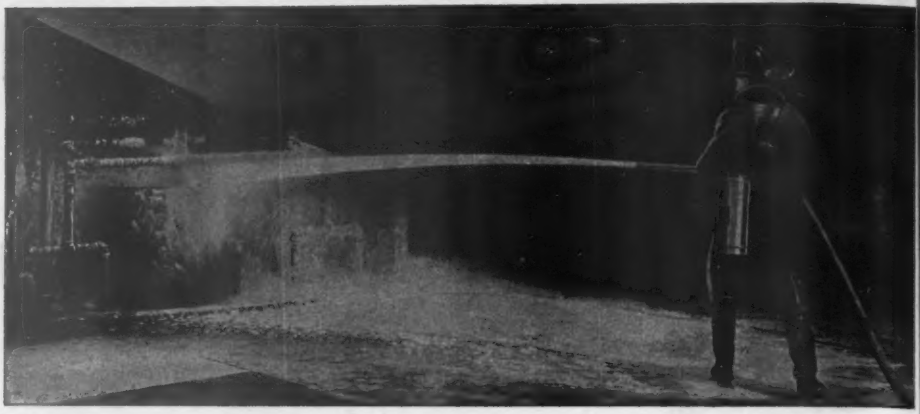
Carnegie-Illinois Completing New Chicago Power Station

CARNEGIE-Illinois Steel Corporation will soon complete and put into operation a new power station, No. 5, at its South Works in Chicago, which will replace older equipment and provide for future expansion and, to a certain extent, will centralize power facilities, according to a recent announcement.

Surplus blast furnace gas will be used as primary boiler fuel, with natural gas and oil and pulverized coal as secondary fuels. The building will house three boilers, each with a capacity of 300,000 lb. of steam per hour; one 25,000-kw. condensing turbo-generator, operating at 1,500 r.p.m., and three 75,000-cu. ft. per minute condensing turbo-blowers, operating at 3,000 r.p.m. against a maximum discharge pressure of 30 lb. per sq. in. gage.

James H. Perkins G-E Director

JAMES H. Perkins, chairman of the board of directors of the National City Bank of New York, was elected a director of the General Electric Company at a recent board meeting.



A New Low-Cost Foam Tool!

Combines Water, Solution and Air To Form Fire-Smothering Foam

Public utilities are welcoming this revolutionary larger-capacity foam equipment for flammable liquid fires.

The specially designed PHOMAIRE Play Pipe connects to your hose line (¾" to 2½"). When the water is turned on, PHOMAIDE, a new foam-making solution carried in a Hip Pack, and air are automatically drawn into the water stream in the proper proportions to form foam.

There are no complicated preliminaries, no confusing adjustments, no moving parts. And only one man is required at the Play Pipe.

Less than 20 gallons of water at a pressure of 75 pounds or more are required per minute. This is the only efficient foam unit available for small lines. One gallon of Phomaide Solution makes 350 gallons of foam. 300 to 400 gallons per minute may be continuously produced by merely pouring additional solution into the Hip Pack.

This is NEWS. Without obligation, ask for descriptive literature, prices and a demonstration of the Phomaire Unit illustrated at the left. Don't wait! Mail your request now.

Get the Latest Foam Equipment

Phomaire PLAY PIPE and Phomaide SOLUTION

developed, made and sold by

Pyrene Manufacturing Company
NEWARK NEW JERSEY
ATLANTA KANSAS CITY CHICAGO SAN FRANCISCO

The sale of Modern Lighting for Modern Store Fronts should *begin at Home!*

Here's how Architect Geo. F. Sansbury and the Potomac Edison Company convince the merchants and property owners of Cumberland, Md., of the value of brightly lighted stores.

A modern store front demands modern illumination. And modern illumination means a heavier lighting load. There's a natural tie-up if there ever was one . . . new Pittco Store Fronts and modern lighting.

But to take best advantage of this tie-up . . . to convince prospects in your community of the soundness of store front modernization with better lighting . . . there's nothing more valuable than an actual example . . . on your own show rooms . . . of just what you mean.

You talk to a merchant . . . tell him the need for modern merchandising methods . . . plug away on the idea of a new store front with better lighting. And to clinch the argument, you say "Look at our own quarters down the street. There's a new front . . . illuminated in the modern manner. We practice what we preach . . . because we know it means better business!"

Put a new Pittco Front on your utility show rooms. Make them an example of what you preach. And when the Pittco Store Front Caravan, sponsored by Pittsburgh Plate Glass Company, comes to your territory, don't miss it. It shows you numerous actual examples of modern store front lighting. It offers you an opportunity to cooperate with a promotional effort that leads directly to more business for you. Contact our local branch for data about the Caravan . . . and for any cooperation on store fronts you may need in your work.

Paint · PITTSBURGH · Glass
PLATE GLASS COMPANY

Meet the NEW CLASSIFICATION of ACCOUNTS

with punched card accounting

Now that many accounting structures will have to be reorganized to meet the Federal Power Classification, an excellent opportunity is offered to install the modern punched card method of accounting. The speed and efficiency of this method have long been accepted. Now that changes are required, why not investigate the advantages which the punched card method brings to all procedures?

Find out how International Electric Bookkeeping and Accounting Machines "read" the information punched in the cards and automatically add, subtract, multiply and print the detailed records you require. Your nearest International representative will be glad to show you how and why the punched card method will give maximum information in minimum time, and at minimum cost. Call him today. No obligation.

Consider these ADVANTAGES

1. SPEED. *Reports are obtained in order of importance, automatically by machine operation.*

2. FLEXIBILITY. *You can meet New Classification demands and still maintain your present set-up with punched cards.*

3. ACCURACY. *The punched cards form a reliable record which is not subject to alteration or error.*

INTERNATIONAL BUSINESS MACHINES CORPORATION

GENERAL OFFICES:
270 BROADWAY, NEW YORK, N. Y.

BRANCH OFFICES IN
PRINCIPAL CITIES OF THE WORLD

Easily handled, this outfit backfills a lot of ditch, quickly

With its controlled differential steering, the Cletrac is just the outfit for the backfilling job . . . for all tractor jobs.

It's more easily handled . . . more perfectly controlled . . . more quickly maneuvered. The result: more work done more economically.

And the Cletrac is built to take it . . . to last longer, ask fewer favors, require less attention on the job.

Among the fifteen models—either gas, tractor fue or Diesel powered—there's the right size for ever job, 22 to 94 horsepower.

Investigate the Cletrac and the complete line of wor ing equipment—bulldozers, scrapers, air compresso welders, post hole augers, rock crushers, front en loaders, winches, booms . . . a tool for every re quirement.

THE CLEVELAND TRACTOR COMPANY • CLEVELAND, OHIO

Cletrac
Crawler Tractors

The only tractors with controlled differential steering that keeps both track pulling at all times . . . on the turn as well as on the straightaway

INDEX TO ADVERTISERS

(Concluded on Page 80)

INDEX TO ADVERTISERS (Concluded)

Public Utilities FORTNIGHTLY

Index to Volume XX

Including the Issues of July 8, 1937 to December 23, 1937

PUBLIC UTILITIES REPORTS, INC.
WASHINGTON, D. C.

INDEX

TO VOL. XX OF *Public Utilities Fortnightly*

Pages by Issue

Feature Articles

Feature Articles—*Continued*

Illustrations

Frontispieces

Cartoons

Illustrations—*Continued*

CARTOONS—*Continued* PAGE

Departments

Appendix

Index to Public Utilities Reports

(This section of the magazine which is a preprint of the decisions, orders, and recommendations of courts and commissions, is too voluminous to be included in this index. These reports are published annually, in their entirety, in five bound volumes, together with the Annual Digest; copies may be obtained from the publishers, PUBLIC UTILITIES REPORTS, INC., *Munsey Building, Washington, D. C., upon application.)*

Subject Index

T

This New RIDGID Stops 75% of your Pipe Wrench Repairs

Have you seen the new RIDGID Wrench? Stronger and safer than ever —greater thickness of special alloy metal in the guaranteed housing and improved design. With its chrome molybdenum alloy jaws, it practically ends your broken wrench problems and expense.

No wonder RIDGID has millions of users all over the world. Replaceable jaws are slip- and lock-proof. Handy pipe scale on full-floating hook jaw. Adjusting nut spins easily in all sizes, 6" to 60". Comfortable grip handle. End pattern for pipes against flat surfaces.

● Test the RIDGID any way against any other wrench. You'll like the "feel" of it, its safety, its economy. Ask your Jobber — today.

The Ridge Tool Co. Elyria, Ohio

This RIDGID Wrench Saves Man-Power

RIDGID Compound-Leverage Wrench makes one man strong as six—pays for itself quickly in salvaged fittings.

A RIDGID PIPE TOOL

WHAT WILL HAPPEN?

WILL your breakers at Substation B open safely if you get a short circuit on Feeder 15? What will happen if they don't? Will those new factory loads change the stability of your system? What will happen if they do?

These are questions your engineers must answer today, tomorrow, and next week—just as in the past. But loads and other conditions change faster today than they did a few years ago. Your standard of service is better. Your customers expect more service at less cost. "What is the best thing to do next?" has become your question of the day.

To help you get the answers, General Electric engineers have made available the most modern type of network analyzer. Complicated calculations are thus greatly simplified. New generators and condensers are properly located. Modernization plans are clarified. A thousands questions vital to your future service record are answered more quickly and accurately. And the results are sure to bring greater freedom from "trouble," greater safety to workmen, and lower operating costs.

This improved network analyzer is another example of engineering service made possible through your continued purchases. It is an extra value—a short cut to improved service—that you can obtain only through those manufacturers who have the facilities and personnel to do this kind of work.

GENERAL ELECTRIC

Filing No. 170

96-427B